REVIEW OF THE U.S. INTERNATIONAL TRADE COMMISSION DECISION ON IMPORTS OF SWINE AND PORK PRODUCTS FROM CANADA

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON DEPARTMENT OPERATIONS, RESEARCH, AND FOREIGN AGRICULTURE

AND THE

SUBCOMMITTEE ON LIVESTOCK, DAIRY, AND POULTRY

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

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REVIEW OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION DECISION ON IMPORTS OF SWINE AND PORK PRODUCTS FROM CANADA

WEDNESDAY, OCTOBER 30, 1985

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON DEPARTMENT OPERATIONS, RESEARCH, AND FOREIGN AGRICULTURE, AND SUBCOMMITTEE ON LIVESTOCK, DAIRY, AND POULTRY, COMMITTEE ON AGRICULTURE,

Washington, DC.

The subcommittees met, pursuant to notice, at 9:40 a.m., in room 1302, Longworth House Office Building, Hon. Berkley Bedell (chairman of the Subcommittee on Department Operations, Research, and Foreign Agriculture) presiding.

Present from the Subcommittee on Department Operations, Research, and Foreign Agriculture: Representatives Penny, Volkmer, Roberts, and Gunderson.

Present from the Subcommittee on Livestock, Dairy, and Poultry: Representatives Coelho, Volkmer, Olin, Penny, English, Hopkins, Stangeland, Gunderson, and Smith.

Also present: Representative Bereuter.

Staff present: Francie Monaghan and Kathy Hughes, clerks; Timothy J. Galvin, Diane Sligar, Kim Schnoor, Courtney Pastrick, Jeffrey Weiss, Charles Rawls, Gary R. Mitchell, John Conrad, and Carol Ann Dubard.

OPENING STATEMENT OF HON. BERKLEY BEDELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. BEDELL. The Subcommittee on Department Operations, Research, and Foreign Agriculture and the Subcommittee on Livestock, Dairy, and Poultry meet today to examine the recent United States International Trade Commission's decision on imported Canadian swine and pork products.

As we know, the ITC decision provided for countervailing duties on live hogs but not on pork products. In making a distinction between live hogs and pork products, the ITC apparently based its decision on the contention that hogs are dissimilar from pork and that pork producers do not share in the economic risks of pork processing. This decision, understandably, strikes pork producers as baffling, at best, and arbitrary, at worst.

Many of those in the pork industry predicted that, in the wake of the ITC decision, we would simply see a shift in imports from live

hogs to pork products. In fact, recent statistics point to at least a 10 percent increase in pork imports since the decision was made.

In an effort to address the loophole created by the ITC decision, I, along with 22 other Members, introduced H.R. 3338. That bill seeks to remedy the situation by providing for relief in cases where raw agricultural product is used to produce a processed product in a single continuous line of production or where producers of the raw product and producers of the processed product display a significant amount of economic interdependence.

Of course, because H.R. 3338 is an amendment to the Tariff Act, it has been referred to the Ways and Means Subcommittee on Trade for consideration. Although the Committee on Agriculture will not be able to advance the legislation directly, I look forward to working with the Ways and Means Subcommittee in encouraging prompt action on the matter.

This morning, we will hear from representatives of pork producers and other industry groups who have been similarly affected by the ITC's decision. Officials from the ITC were not asked to appear before the subcommittee because of some concern that since the pork decision is under appeal, public statements by ITC representatives could prejudice the final outcome of the case. All witnesses have been advised to keep their presentations to 5 minutes or less, and I ask for your complete cooperation in adhering to this request so that we can maximize the time available for questions.

Mr. Roberts.

OPENING STATEMENT OF HON. PAT ROBERTS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. ROBERTS. Thank you, Mr. Chairman.

I want to commend you for calling this hearing today on the International Trade Commission's recent ruling concerning the Canadian hog import situation. The flood of Canadian pork into the United States has been of great concern to the pork producers in my district in Kansas as well as pork producers all throughout the Nation.

I must confess the recent ruling by the ITC has left many within the industry and in Congress totally baffled. First, the ITC ruled that the Canadian Government was subsidizing pork production in Canada. This meant that the U.S. Government could impose countervailing duties on live hogs imported into the United States. That was a positive step in the right direction.

However, the ITC then took a direction that I cannot understand when they ruled that pork growers and pork packers were not producers of a like product. The Commission held that pork growers and pork packers were not producing a like product because there was allegedly not sufficient legal integration between growers and packers—regardless of the economic interdependence.

While I applaud the ITC's ruling on live hogs, it would appear to me that the Canadians will simply circumvent the decision by slaughtering the hogs in Canada and shipping the product to the United States in the form of fresh chilled pork and fresh frozen pork.

In addition, the splitting of the issue by the ITC does have ominous implications for any other agricultural producers who may want to bring similar cases before the ITC. This ruling could even affect their standing before the Commission.

I want to commend Chairman Bedell for introducing legislation to correct this situation. I was an original cosponsor of that bill.

At this point, Mr. Chairman, I would simply ask that my statement be inserted in the record at this point.

Mr. BEDELL. Without objection, it will be added to the record.

[The prepared statement of Mr. Roberts follows:]

PREPARED STATEMENT OF HON. PAT ROBERTS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Mr. Chairman. I want to commend you for calling this hearing today on the International Trade Commissions recent ruling concerning the Canadian hog import situation. The flood of Canadian pork into the United States has been of great concern to the pork producers in my district as well as pork producers throughout the nation.

I must confess the recent ruling by the ITC has left many within the industry and in Congress totally baffled. First, the ITC ruled that the Canadian government was subsidizing pork production in Canada. This meant that the U.S. government could impose countervailing duties on live hogs imported into the United States. That was a positive step in the right direction.

However, the ITC then took a direction that I cannot understand when they ruled that pork growers and pork packers were not producers of a like product. The commission held that

pork growers and pork packers were not producing a like product because there was not sufficient legal integration between growers and packers (regardless of the economic interdependence.) While I applaud the ITC's ruling on live hogs, it would appear to me that the Canadians will simply circumvent the decision by slaughtering the hogs in Canada and shipping the product to the United States in the form of fresh chilled pork and fresh frozen pork.

In addition, the splitting of the issue by the ITC does have ominous implication for any other agricultural producers who may want to bring similar cases before the ITC. This ruling could even affect their standing before the Commission.

I commend Chairman Bedell for introducing legislation to correct this situation. I was an original co-sponsor of the bill. While I understand the measure may be beyond the jurisdiction of this Committee, I believe it is an excellent idea

to hold a hearing and outline the issue's impact on the agricultural community. We should make every effort to convince our colleagues on the Ways and Means Committee that the intent of Congress as manifested in the 1979 legislative history on the Trade Agreements Act is still valid and to act immediately on H.R. 3328.

H.R. 3328 would reaffirm the intent of Congress that raw and initially processed agricultural products whose producers are economically interdependent are to be considered producers of a like product for the purposes of the trade laws. The bill does not expand the current law. The adoption of this legislation would allow the pork producers to go before the ITC and argue their case.

Mr. Chairman, once again I commend you for calling this hearing. I look forward to the witnesses comments on the Canadian pork issue.

Mr. VOLKMER. Mr. Chairman.

Mr. BEDELL. Mr. Volkmer.

Mr. VOLKMER. I would just like to say, too, that I support the legislation but that I will not be able to stay through the full amount of the hearing. I will be in and out because I have to testify at another committee meeting at which I have legislation I am sponsoring.

I also wish to welcome Mr. Phillips here who will be your first witness today, and I look forward to working with you and everyone concerned with this to correct this situation that has been imposed by the ITC.

Mr. BEDELL. Thank you.

Mr. Olin.

Mr. OLIN. Mr. Chairman, I would certainly like to commend you for holding the hearing. It is unfortunate that the ITC can't be represented here at the hearing. I understand the reason for that, but is it possible that we could obtain information from them by other means, either by correspondence or by perhaps a closed hearing to understand just what their logic was in ruling as they did?

Mr. BEDELL. I agree that we should see if we can arrange an informal meeting with them, because it is pretty hard to comprehend how the ITC can make a distinction between hogs and pork.

Mr. OLIN. I think we are going to find here today that we are at considerable risk for the import of pork products and it is something that is going to have to be fixed. We really ought to understand why the ITC ruled as they did. They are a very responsible body; they must have had some logic.

Mr. BEDELL. I think that is a very good suggestion. We should ask the staff to see if they could set up an informal, off-the-record meeting with the ITC commissioners to find out the reasoning behind the decision.

Mr. OLIN. I thank the chairman. I would be happy to participate in such an informal meeting.

Mr. BEDELL. Thank you. That is a very good suggestion.

Our first set of witnesses will be a panel consisting of Mr. James Phillips, executive committee member, National Pork Producers Council; Mr. Gene Wachholtz, general product manager, Farmland Foods; and Mr. Mark Sandstrom, attorney at Thompson, Hine and Flory. We would like to have you come forth at this time.

Mr. SANDSTROM. Thank you, Mr. Chairman.

If it would be acceptable to the subcommittee, it might be best if the three of us were to read or paraphrase our testimony and then be available for questions.

Mr. BEDELL. Your entire statements will be entered in the record. If you wish to summarize, it would certainly be appreciated.

Mr. SANDSTROM. Fine; thank you.

Mr. BEDELL. Who wishes to go first? Mr. Phillips.

STATEMENT OF JAMES PHILLIPS, MEMBER, EXECUTIVE COMMITTEE, NATIONAL PORK PRODUCERS COUNCIL

Mr. PHILLIPS. Thank you for allowing us to appear and give testimony on this issue.

I am Jim Phillips from Drexel, MO. I am a member of the executive committee of the National Pork Producers Council. I would like to talk to you today about the Canadian import and pork import and the effects of that on the farmers of my area.

My wife, son, and I operate our own farm with the help of three employees. We have about 500 sows finishing out in a farrow to finish operation at about 8,000 hogs a year. Besides that, I farm about 1,000 acres of land. This is about the average size of a two-family unit in our area of Missouri.

Although the pork producers of the country are suffering from the low hog prices and negative margins, the producers of Missouri have been suffering the last few years as a result of prolonged drought in the area. In fact, in the last 5 years, we have had 4 years of crop failures due to either drought or too much rain. Because of this, farmers in our area have been doubly hard hit by not only the drought but the adverse economic conditions.

We have suffered from the increased imports of subsidized Canadian pork and hogs into the United States. Several producers in my area have stopped raising hogs. In fact, in southern Missouri, approximately 60 percent of the pork producers have gone out of business. With our economic conditions, the last thing we needed was increased Canadian imports affecting the amount of pork in our American trade.

According to the International Trade Commission, pork producers as a whole are suffering financially. The U.S. pork production has decreased 9 percent between 1981 and 1982, 9 percent more during 1982, and another 7 percent during 1983. Exports have decreased 10 percent, 6 percent, and 4 percent in those same years. Despite this decrease in production, the total pork supply stayed high as a result of the increased imports of subsidized hogs and pork from Canada and other countries.

These hog prices remained low and farrow-to-finish growers suffered losses of $2.62 per hog in 1983 and $4.45 per hog in 1984. Losses to feeders were $5.52 per hundredweight in 1983, and $4.44 per hundredweight in 1984. According to the Department of Agriculture, hog prices remain so low that our producers are still unable to operate at breakeven points.

The general levels of hog inventory and estimates of hog production continue to decline due to the unfavorable prices. Producer margins during the first half of 1985 remain below the cost of production.

The ITC's decision to treat producers and packers as different industries will have a tremendous impact on pork producers. The Canadians will shift their exports from live hogs to pork. Increased pork in the market affects producers just as much as packers. However, as I understand it, we pork producers can't get any relief against the increased pork imports because we are not considered part of the pork industry. The ITC will say we already have our relief with increased duties on hogs. In the long run, that won't help us. We may have won a battle but have lost the war against the import of pork.

Producers in my area firmly believe that Canadian imports have cost us about $5 per hundredweight. For the country overall, Prof. Glenn Grimes of the University of Missouri has shown us that for

the first 8 months of 1985, farmers have lost an average of between $2.08 and $4.77 per hundredweight of hog. That means a total loss of between $277 to $635 million.

I have been in the hog business for 18 years, and I know that I produce a quality hog at a cost-efficient basis that can compete with any hog grown anywhere in the world. All we ask is that we aren't subjected to a heavy influx of subsidized pork from Canada.

Thank you very much for letting me visit with you today. I would be happy to answer any questions.

[The prepared statement of Mr. Phillips follows:]

Testimony

Before the
House Agriculture Subcommittees
on Department Operations,
Research and Foreign Agriculture,
and Livestock, Dairy and Poultry

Review of the International Trade Commission Decision on Imports of Swine and Pork Products from Canada

James Phillips
Drexel, Missouri
Member, Executive Committee
National Pork Producers Council

October 30, 1985

Testimony

of

Jim Phillips

Pork Producer

Drexel, Missouri

October 30, 1985

Testimony of Jim Phillips

My name is Jim Phillips. I am a pork producer from Drexel, Missouri and am on the National Pork Producers Council Executive Committee. I am here today to talk to you about the effects of Canadian hog and pork imports on the farmers in my part of the country. My wife, son and I, operate our farm with the help of three hired hands. We maintain 450 sow and produce and sell over 8,000 head of hog annually on a farrow-to-finish basis. We grow about 1,000 acres of corn, wheat, milo and soybeans. That does not meet all of our feed needs for the hogs, so we do have to buy some additional grain. Our farm is about the average size for this area of Missouri.

Although pork producers throughout the country are suffering from low hog prices and negative margins, producers in Missouri are suffering even more as a result of a prolonged drought. In fact, four out of the last five years, we have had to deal with crop failures due to drought. Because of this, hog producers in my area have been doubly hard hit. Not only have we suffered on account of the weather, but also we have been adversely affected by the increased imports of subsidized Canadian swine and pork into the U.S. Several producers in my area have stopped raising hogs. In southern Missouri, 60% of the producers have gone out of business. With our economic condition due to the droughts, the last thing we needed was an influx of Canadian imports. We had been importing grain from Iowa; however, Iowa had a drought last year and we had to look farther afield.

According to the International Trade Commission (ITC) hog farmers as a whole are suffering financially. U.S. swine production decreased 9% between 1981 and 1982, 9% betweeen 1982 and 1983, and another 7% between 1983 and 1984. Exports decreased 10%, 6% and 4% over those same periods. Despite this decrease in production, total pork supply stayed high as a result of increased imports of subsidized swine and pork from Canada and other countries. These hog prices remained low and farrow-to-finish growers suffered losses of $2.62 per hog in 1983 and $4.45 per hog in 1984. Losses to feeders were $5.52

per cwt. in 1983 and $4.44 per cwt. in 1984. According to the U.S. Department of Agriculture, hog prices remain so low that producers still are unable to operate at breakeven points. General levels of hog inventory and estimates of hog production continue to decline due to unfavorable prices. Producer margins for the first half of 1985 remain negative.

The ITC's decision to treat producers and packers as different industries will have a tremendous impact on hog farmers. The Canadians will shift their exports from live swine to pork. Increased pork in the market affects producers just as much as packers. However, as I understand it, we farmers can't get any relief against increased pork imports because we're not considered part of the pork industry. The ITC will say we already have our relief--duties on hogs. In the long run, that won't help us. We may have won a battle, but we have certainly lost the war.

The producers in my area firmly believe that Canadian imports have cost us about $5.00 per cwt. For the country overall, Professor Glenn Grimes from the University of Missouri has shown us that for the first eight months of 1985, farmers have lost an average of $2.08 to $4.77 per cwt. of hog. That means a total loss of between $277 to $635 million.

I have been in the hog business for eighteen years. We can produce a quality hog on a cost efficient basis that can match any hog grown anywhere in the world. All we ask is that we aren't subjected to a heavy influx of subsidized pork from Canada.

Thank you for letting me visit with you today. I will be happy to answer any questions you might have.

Mr. BEDELL. Thank you, Mr. Phillips.
Mr. Wachholtz, are you next?
Mr. WACHHOLTZ. Yes; thank you.

STATEMENT OF GENE WACHHOLTZ, GENERAL PRODUCT MANAGER, FARMLAND FOODS, INC.

Mr. WACHHOLTZ. Good morning, Mr. Chairman.

My name is Gene Wachholtz. I am the general product manager of Farmland Foods, Inc., of Kansas City, MO.

Mr. BEDELL. I thought you would probably want to mention you are from Kansas City.

Mr. WACHHOLTZ. Yes; I had to mention that.

Mr. BEDELL. Congratulations to you.

Mr. WACHHOLTZ. Thank you.

My company is engaged in the pork processing and packing business. We have packing plants in Dennison and Iowa Falls, IA, as well as in Crete, NE. Farmland also runs a pork processing facility in Carroll, IA. Farmland Foods is owned by our member patrons and by Farmland Industries which is a regional farm supply and manufacturing cooperative owned by 2,300 member cooperatives in 19 Midwest States which, in turn, is owned by 500,000 individual farm and ranch families.

I am here today to give the packers' perspective on the need for better treatment of agricultural commodities under the trade laws. The ITC decision to ignore imports of fresh and chilled or frozen pork under this ITC ruling has created a hardship on the individual packer and producer. The ITC has treated pork more as an industrial product rather than as coming from the live hogs in a direct line.

Pork is a commodity just as swine is a commodity. It is treated the same in the mercantile. It is treated the same on the daily markets. Pork prices are printed daily in a publication called the National Provisioner Yellow Sheet, and they give different prices for every cut, and it is reflected on that daily basis. In total, these individual cuts have a direct relationship to the price of the animal that we are able to pay on a day-to-day basis.

Now that duties have been imposed on the Canadian hogs but not pork, it is obvious to those of us in the trade that Canada will merely increase its capacity to slaughter hogs, providing more jobs to the Canadians rather than here in the United States and will bring across subsidized fresh pork products into this country. The supply of pork will be increased and the laws of supply and demand will take effect immediately. Both elements of this pork industry will suffer, and the results will be tough on both packers and producers given the serious economic conditions that currently exist in the industry today.

Any benefits that were supposedly derived from the original ITC ruling will be strictly undercut by their failure to include pork products in this.

In our company, we have many specific instances regarding the impact of these sales of the Canadian pork. We have many examples in Seattle and Portland, the Northwest quadrant of our country, where specifically, as can be noted for the record, we have had

daily instances of being 6 cents underpriced by the Canadians in those particular markets. With that, there is an additional 3 cents that many of the Canadian packers are currently so-called rebating to the individual retailers that will stock and advertise the individual Canadian pork products. So, this is amounting to 9 cents, approximately, on this one particular week. While that does seem rather small, when you multiply it times the pounds per load and the number of loads that are coming into that area on a weekly basis, it grows rather quickly.

In other parts of the country, such as in Buffalo, we are seeing this same movement of product. We have lost either all or parts of business to many customers in this particular area as a result of the Canadian pork. We have also seen a new Canadian packer move into the Buffalo area since the midsummer or the ITC ruling, and to the best of our knowledge, the Canadian packer had never been in this country before. That packer has quickly expanded and by late summer, was in the New York City area and is beginning to spread throughout the United States and will cover the Northern tier of the country, at least, in the near future.

One other example on this particular packer is that he did bring in approximately 20 loads at 40,000 pounds per load of ribs this summer at 23 cents per pound discount to what the domestic market was on that particular product. That individual sale alone amounted to $184,000, so it is of a major impact.

We are also seeing during these approaching holidays quotations on boneless hams at approximately 30 cents per pound below the domestic quotations.

Producers and packers must seriously consider taking some kind of action to neutralize this effect, we feel, of the ITC. While we are looking at that, I would certainly encourage the looking at EC, or European Community, products as we are also experiencing this same type of problem in those particular lines. We have been pushed out of certain markets also by the European Community products and have felt this rather drastically.

This change in volume has forced us to lower our prices below the cost of production in order to compete with these unfairly priced imports.

Farmland Foods supports the amendments embodied in H.R. 3328, and we appreciate the opportunity to testify before you today and applaud your initiatives to seek relief from unfairly subsidized products.

Thank you.

[The prepared statement of Mr. Wachholtz follows:]

Testimony

of

Gene Wachholtz

General Product Manager

Farmland Foods, Inc.

October 30, 1985

Testimony of Gene Wachholtz

Good morning, Mr. Chairman. My name is Gene Wachholtz. I am the General Product Manager of Farmland Foods, Inc. of Kansas City, Missouri. My company is engaged in the pork packing and processing business. We have packing plants in Dennison and Iowa Falls, Iowa as well as in Crete, Nebraska. Farmland also runs a pork processing plant in Carroll, Iowa. Our annual slaughter capacity is over five million head of hogs.

Farmland Foods, Inc. is owned both by pork producers and by Farmland Industries, Inc. which is a regional farm supply and manufacturing cooperative owned by 2,300 member

cooperatives in 19 mid-west states. These 2,300 local cooperatives are in turn owned by 500,000 farm and ranch families.

I am here today to give you the packers' perspective on the need for better treatment of agricultural commodities under the trade laws. Farmland is particularly concerned with the recent ITC decision which imposed duties on live hogs from Canada, but essentially ignored imports of subsidized fresh, chilled and frozen pork from that country. The decision indicates a lack of understanding on the part of the ITC of the way the pork industry operates. The ITC distinguished between swine and pork and seemed to treat hogs as a commodity, but fresh, chilled or frozen pork as an unrelated, non-commodity type product. In fact, the ITC treated pork as it would an industrial product, which is made up of many components and sold in relatively few discrete sales.

Pork is a commodity just as swine is a commodity. It is traded in commodities markets and market prices are published in newspapers and commodity publications, such as the National Provisioner yellow sheet. The yellow sheet is published daily, giving the price of every different cut of pork on the market. Pork prices fluctuate from day to day with drops in supply and demand, and they have a direct relation to the price of hogs. Increases in the supply of pork have negative effects on both pork and hog prices.

Now that duties have been imposed on Canadian hogs but not pork, it is obvious to those of us in the trade that the Canadians will simply slaughter more hogs in Canada and bring the subsidized product across the border in the form of fresh and processed pork. That, of course, means that the supply of pork will be increased and the prices will remain low. Such imports will adversely affect packers and producers. If a packer is forced to lower the price at which he sells his product, he will have to cut back on what he pays producers. Both elements of the pork industry will suffer. This result is tough on both packers and producers, given the serious economic conditions in the industry today. In this economic context, the benefit of any duties imposed on Canadian swine as a result of the countervailing duty investigation will be undercut by the failure to include pork.

Many packers are already operating at negative margins. The packing industry as a whole is suffering with many plants not even able to cover their costs. As confirmed by the ITC in its final determination on live swine and pork from Canada, the condition of the pork packing industry deteriorated over the years 1982-85 and is continuing to decline. Even though the industry has been forced to lower its wage rates and has stepped up productivity, it remains not only unprofitable, but has suffered continuing negative margins.

In our company, we have specifically noticed the impact of sales of subsidized Canadian pork. For example, in Seattle, we had been selling several loads of pork per month to one large account. Last summer, we lost sales due to lower priced Canadian imports. Specifically, our price for a trimmed pork loin was $1.23 per pound, delivered to the wholesale house. The Canadian price was $1.17 per pound, indicating a 6¢ per pound lower price. In reality, the price spread was even wider than indicated by an additional three cents per pound because of a Canadian rebate program. In this instance, a Canadian packer pays the retailer or wholesaler three cents per pound if the retailer/wholesaler will enter into a pork purchasing program with them. The Canadians also seem to have a stock of unlimited advertising dollars to promote their products.

In Portland, we had been shipping three loads of fresh pork per month to a particular account. That business has been taken away almost entirely by the Canadians due to a much lower selling price. The Farmland Foods price was $1.23 per pound for a trimmed pork loin while the Canadian price was $1.18 per pound. Again, the Canadians have also given rebates to retailers and wholesalers for purchasing their products.

In the Buffalo area, we used to ship three loads a month to one particular account. We have lost 75% of that business to the Canadians. The Canadians are selling their pork at an

average of 10-12¢ per pound less than the domestic price in that market. In mid-summer of this year, a new Canadian packer entered the Buffalo area. Previously, this packer had not done any business that we know of in the United States. That packer quickly expanded and by late summer, was in the New York City area. At one point this summer, that same packer brought twenty loads of ribs into the United States at 23¢ per pound less than the domestic price equalling $184,000. Now, with the approaching holidays, the Canadians are offering boneless hams at an average of 30¢ per pound lower than domestic quotations.

Producers and packers must seriously consider taking some kind of action to neutralize the effect of the ITC's determination. At that time, it might also be wise to address the problem of rapidly increasing subsidized imports of fresh and processed pork from the European Community. Particularly over the last year, we have felt increasing adverse effects of pork imports from the European Community. The change in volume has forced us to lower our prices below cost of production in order to compete with these unfairly priced imports, as we have been virtually pushed out of certain markets.

Farmland Foods supports the amendments embodied in H.R. 3328. Farmland Foods also appreciates the opportunity to testify before you today and applaud this initiative to seek relief from unfairly subsidized imports.

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Mr. BEDELL. Thank you.
Mr. Sandstrom.

STATEMENT OF MARK R. SANDSTROM, ATTORNEY, THOMPSON, HINE & FLORY, AND COUNSEL, NATIONAL PORK PRODUCERS COUNCIL

Mr. SANDSTROM. Thank you, Mr. Chairman.

I am Mark Sandstrom, a partner in the law firm of Thompson, Hine & Flory and counsel to the National Pork Producers Council.

Agricultural commodities have received fairly poor treatment, we believe, under the trade statutes aimed at protecting American industries from unfairly traded imports. During the period 1982 through mid-1985, of the 11 cases—I am talking here about countervailing duties and antidumping cases filed with respect to agricultural products—1 case resulted in an affirmative decision that actually led to the imposition of duties.

This unfair, I could call it, treatment of agricultural products, I think, is based not on any bad or malicious motives on the part of the International Trade Commission, but, frankly, I think a lack of understanding of how agricultural commodities are traded and how they are impacted by imports into the markets. This poor treatment of agricultural commodities, I think, is exemplified most clearly in the case involving subsidized imports of swine and pork from Canada which led to a decision, as has been discussed already today, which would impose duties on imports of hogs but not impose duties on imports of pork.

In making that decision, the Commission, by a 2-to-1 vote, decided that in fact the people who produce hogs and the people who slaughter hogs, the packers, are really different people in different industries. By doing so, the Commission did several things.

First of all, it made it very difficult for us to obtain a finding of injury because what they did, for instance, look at the impact of only hog imports on the hog growers and look at the impact only of swine imports on packers. For instance, when USDA looks at the imports of pork from any country, and particularly Canada, they include hogs and pork in their figures because hogs are basically pork on the hoof. By splitting these two products in those imports, the actual market penetration was cut essentially in half and enabled the Commission to rule that in fact there wasn't sufficient import penetration to find injury to the industry.

The other adverse consequence for us in the future and for possibly many other agricultural commodities is that it affects the issue of standing. That is, a grower of a raw commodity or a producer of a raw commodity may not have standing to bring a case against the semiprocessed product that comes in from that commodity. In the case of pork, which is probably an exception, we do have the imports of the live animal.

But in the case of many other products and almost every livestock product, you do not have the live animal coming in to any great extent. You have the fresh or the processed meat that is the slaughtered meat coming into the country. What the Commission is basically saying is that in many cases the growers of that product or the producers of that livestock will not be able to get any relief

from the actual product that is coming into the country and causing them injury.

In our case, we, of course, have the direct result which is of great concern to us that with about a $7 duty on hogs and no duty on pork, the Canadians, who have sufficient capacity to slaughter all of their hogs in Canada, will simply shift their imports from hogs to fresh chilled and frozen pork, thereby undercutting most of the relief that the industry—and I am including the producers and the packers—obtain from that decision.

This increase has already been manifested in figures reported by the Government of Canada. Imports of fresh chilled and frozen pork were higher by 10 percent in August which is the date that the duties on hogs went into effect as compared with the monthly average for the first 7 months of 1985. In September of this year, that increase doubled to 20 percent above the level of the first 7 months of this year.

So, this shift that we predicted is in fact taking place now. This is, of course, of great concern to us and is one of the reasons we are here today and one of the reasons we are here to support the bill which you have introduced which would help to alleviate that problem, at least in the future.

The Commission has developed a line of past trade cases which has looked at the issue of when producers of a raw commodity and the semiprocessed commodity can be considered producers of a like product and therefore members of the same industry. This line of cases developed from legislative history and the 1979 amendments to the trade statutes, the antidumping and countervailing duty statutes where in the legislative history it was stated that agricultural commodities are of special concern and must be given special treatment under these statutes.

The Congress recognized that there is a link, in fact, between the raw commodity and the processed commodity. Because of that recognition, as I said, a line of cases was developed which, in the early stages in any case, did seem to be reasonable, did seem to reflect the economic relationship between these two levels of products and, in fact, enabled a number of producers to seek to obtain relief.

The Commission had established a two-part test. The first test would be that the raw commodity is produced or manufactured or produced into—I shouldn't say manufactured—but produced or processed into the processed product through a single continuous line of production. The second test, which also had to be satisfied by the Commission, was some demonstration of commonality of economic interest.

The problem that has occurred is that in looking at that issue and the link between the commodity producers and the commodity processors is that the Commission has focused more and more on legal relationships and ignored the economic interrelationship between the products.

The upshot of that is that whether or not a producer of the raw commodity can obtain relief depends frankly on the percent, for instance, of the packer facilities that are owned by the producers. If you happen to be 30 or 40 or 50 percent, you are OK. In the case of pork, it was only about 5 percent. Because of that, basically the

Commission found that we had two industries here and that led to the results I have described.

The problem, of course, is that the economic relationship between the commodity producers and the processors and the impact of imports, frankly, whether they be on the hoof in the case of live swine or as fresh chilled or frozen pork is exactly the same. The effect on prices in the market is exactly the same regardless of whether 5 percent or 90 percent of the processors are owned by the growers.

We have felt, and this bill that you and 20 other members of this committee have sponsored, would take care of this problem in the case of a commodity which can show that it is wholly or substantially processed into the processed product through a single continuous line of production. What that means is that on a de facto basis, if you can demonstrate that fact, you have demonstrated on a de facto basis sufficient commonality of economic interest, you need not show anything more.

We note, however, that the bill also provides for the consideration of other economic interrelationships or condition of interrelationships so that other agricultural products which can justify and demonstrate sufficient link between the commodity and the processed product also can be considered to be like products and also can be considered to be members of the same industry. H.R. 3328 would in fact do that.

I note that there are representatives here today representing other commodities as well. I think if you look at the common line of our testimony and their testimony and our concerns, you will see that in the first instance the main concern that we have is that the Commission focus on the actual economic relationship and not establish artificial legal relationships which may or may not be relevant to the competition that is occurring in the market from these unfairly traded imports. You will also see that in most of these cases there is a close link between the raw commodity and the processed product.

I see that I have gone way over my time. I appreciate your indulgence. I will end here, and we would be glad to answer any questions that you and other members of the committee might have.

[The prepared statement of Mr. Sandstrom follows:]

Testimony

On Behalf of

The National Pork Producers Council

Submitted by

Mark Roy Sandstrom, Esq.

Good morning Mr. Chairman and members of the Subcommittee. I am Mark Sandstrom, a partner in the firm of Thompson, Hine and Flory and Counsel to the National Pork Producers Council.

Of the 11 unfair trade injury investigations concerning agricultural products filed at the International Trade Commission (ITC) in the period 1982-mid 1985, only one case ended in an affirmative determination. This success rate of 9% compares with an average of approximately 40% for cases concerning industrial products. The recent decision of the International Trade Commission ("ITC") in the Countervailing Duty investigation concerning imports of subsidized swine and pork from Canada, exemplifies the difficulties which producers of agricultural commodities have in obtaining relief from

unfairly traded imports under the U.S. trade statutes. The recent ITC decision also demonstrates the need for enactment of H.R. 3328, a bill which would clarify the intent of Congress with regard to the application of the countervailing duty and antidumping statutes to agricultural commodities. This bill covers all agricultural commodities, including livestock.

In order to better understand the existing problem at the ITC, it is useful to examine the Countervailing Duty investigation of Canadian swine and pork imports in detail. Last November, the National Pork Producers Council (NPPC) initiated an investigation against imports of subsidized imports of live swine and fresh, chilled and frozen pork ("pork") from Canada. Wilson Foods, Inc., a prominent domestic pork packer, joined the NPPC as a co-petitioner in an effort to demonstrate the detrimental effect of subsidized Canadian live swine and pork imports on both element of the domestic pork industry, i.e., pork producers and pork packers.

On December 27, 1984, the ITC preliminarily found that there was a reasonable indication that Canadian imports were causing material injury to the domestic pork industry and that producers and packers were part of the same industry.

On April 3, 1985, the Department of Commerce stated in its preliminary affirmative determination that imports of live swine and fresh, chilled and frozen pork from Canada were being subsidized. On June 17, 1985, the Department published

its final affirmative determination in which it reaffirmed that countervailable Canadian subsidies were being paid with respect to imports of swine and pork.

On August 1, 1985, the ITC published its final determination, in which it held that live swine imports were materially injuring the domestic pork producers, but that imports of fresh, chilled and frozen pork were not injuring the packer element of the U.S. industry.[1/] The ITC reversed its earlier decision and found that swine and pork were not "like products" and that producers and packers were therefore not part of the same industry.

On August 15, 1985, the Department of Commerce issued a countervailing duty order imposing duties on imports of Canadian live swine, but did not order the imposition of duties on Canadian pork. The consequence of the ITC decision is that Canadian producers will now slaughter the live hogs into fresh, chilled or frozen pork before sending the product over the border, thereby eliminating much of the beneficial effect which the countervailing duties on swine whould have on domestic producers and packers. With the raw and initially processed products so integrally related, duties on one do little to help the domestic industry. In essence, the American pork producer has won the battle but lost the war.

1/ Live Swine and Pork from Canada, Inv. No. 701-TA-224 (Final), USITC Pub. No. 1733 (1985).

Indeed, the expected shift from hogs to pork has already begun. Imports of Canadian hogs are down over the volume of imports prior to the ITC's decision. On the other hand, Canadian statistics reveal a 10% increase in pork exports to the U.S. in August (the month in which duties on swine went into effect) over the average monthly export figure for January-July 1985. In September, Canadian pork exports to the U.S. rose even further to a level 20% higher than the average for the first seven months of this year.

The domestic hog and pork industry has been seriously affected by subsidized imports. Professor Glenn Grimes, Agricultural Economist from the University of Missouri, has estimated the impact of pork imports from Canada for the first eight months of this year. The price depressing effect on hog prices of Canadian imports is between $2.08 and $4.77 per cwt., while the total revenues lost to domestic producers is in the range of $277 million to $635 million. These figures are well in excess of the yearly average revenue losses due to Canadian imports already experienced in 1982 to 1984. In 1982, the cwt. impact was between $1.19 and $2.97. In 1983, the range was $1.12 to $2.80 and in 1984, losses had increased to between $1.86 and $4.67 per cwt. of hog.

The ITC's determination in the case of Canadian imports has come at the same time that pork imports from other countries are also increasing, particularly from the European

Community ("EC"). Comparing imports from the EC for the first six months of 1984 and the first six months of 1985, USDA figures reveal that there has been a 156% increase in imports of fresh, chilled and frozen pork from EC producers. These imports are, of course, also subsidized under the EC's Common Agricultural Policy ("CAP"). With overall imports increasing dramatically, the ITC's pork decision was particularly untimely.

Congress stated in the legislative history to the Trade Agreements Act of 1979 that agricultural commodities require special attention with respect to the application of the injury provisions of the countervailing duty and antidumping statute.[2/] Special concern was expressed in the case, for example of raw and initially processed products, particularly in the case of livestock. In applying this legislative intent in past cases, the ITC developed a two part test to determine whether raw and processed agricultural

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2/ Senate Finance Committee Report on the Trade Agreements Act of 1979:

> "Because of the special nature of agriculture, . . . special problems exist in determining whether an agricultural industry is materially injured."

The report went on to imply that there was a special relationship, for example, between cattle farmers and processors. S. Rept. No. 96-249, 96th Cong., 1st Sess. 88 (1979).

commodities are like products.[3/] If so, producers of the raw commodity are deemed to be members of the same industry as the processors and can seek relief under the trade statutes against imports of the processed product (pork).

The first element of the ITC's test involved a determination of whether the raw product is processed into the processed product through a single continuous line of production. If the raw product is devoted primarily to the production of the processed product, and if the initially processed product can only be made from the raw product, then a single continuous line of production exists. For example, in the case of hogs and pork, the slaughtering process which transforms a live hog into pork meat constitutes a single continuous line of production. One can only obtain pork meat from a hog and the sole purpose for breeding a hog is to yield pork meat.

The second element of the ITC's like product test requires a showing of commonality of economic interest. The ITC has often focused on whether there exists interlocking ownership in the industry, such as where growers actually own processing plants through cooperatives. The ITC has also found

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3/ See Lamb Meat From New Zealand, Inv. No. 701-TA-80 (Preliminary), USITC Pub. No. 1191 [3 ITRD 1725] (1981); Frozen Concentrated Orange Juice From Brazil, Inc. No. 701-TA-184 (Final), USITC Pub. No. 1406 [4 ITRD 1693] (1983); Fish, Fresh, Chilled or Frozen, Whether or Not Whole, But Not Otherwise Prepared or Preserved From Canada, Inv. No. 701-TA-40 (Final), USITC Pub. No. 1066 [2 ITRD 53-1] (1980).

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that industries in which growers and processors share the risk in the marketplace, through contractual agreements relating the price of the raw commodity to the processed product, satisfy the commonality of economic interest test.

Unfortunately, the ITC, has focused increasingly on legal relationships within an industry and has ignored economic relationships between the commodity producers and processors. In the pork industry, although both pork producers and packers share a significant commonality of economic interest resulting from the nature of the pork market, the second prong of the ITC's legal test was not satisfied because only 4-5% of pork producers actually own packing plants. Nonetheless, it is very clear to individuals familiar with pork and other agricultural commodities, that the economic interdependence of producers and processors and the impact of imports upon them is the same regardless of whether 5% or 90% of the processing plants are owned by producers. In the ITC's decision to impose a requirement of such legal relationships is both inappropriate and irrelevant. This view was supported in a dissenting opinion of Vice Chairman Liebeler, one of our three Commissioners voting in the case.[4/]

In the first place, the Commission should focus on economic relationships in examining the injurious impact of subsidized or dumped imports on agricultural commodities.

4/ Supra, note 1 at 19-21.

Moreover, where the processed product is produced from the raw commodity substantially or wholly through a single continuous line of production, that fact in and of itself demonstrates sufficient commonality of economic interest to satisfy the like product test. Members of the pork industry have a firm opinion on this point, since it is difficult to conceive of any other commodity which better satisfies the single continuous line of production test.

In order to solve the problem created by the ITC's interpretation of these trade statutes, Congressmen Bedell (D., Iowa), Roberts (R., Kansas), Madigan (R., Illinois), and seventeen other members of the House Committee on Agriculture have introduced H.R. 3328, a bill which seeks to amend the Tariff Act of 1930 by clarifying Congressional intent.

H.R. 3328 provides that producers and processors of agricultural commodities shall be considered members of the same industry if they meet either of two tests articulated in the bill. If the raw product and the processed product are wholly or substantially linked through a single continuous line of producton, then such raw and processed products are deemed to be like products and the producers and processors of the products are deemed to be members of the same industry. Secondly, if the producers and processors can otherwise demonstrate sufficient commonality of economic interest, which will likely include a showing of some degree of a single

continuous line of production relationship, they can also be considered members of the same industry. Evidence of legal relationships may be considered, but the bill emphasizes that the key relationships are economic, whether they be imposed contractually or by the nature of the market.

This legislation would require the ITC to apply the injury provisions of the countervailing and antidumping statute to agricultural commodities in a manner which reflects the realities of the way such commodities are produced, priced and sold and by the way the producers and processors are affected by unfairly traded imports. In the case of pork, this legislation would have increased the chances that the ITC would have found that Canadian imports were causing injury to the entire industry, including packers. The impact of imports of both swine and pork would have been properly combined so that the actual and total impact of Canadian imports would have been taken into consideration by the ITC.

In addition, the bill would insure that producers of raw commodities have standing to file petitions for relief under these statutes against subsidized or dumped imports of the processed commodity. As an example, beef producers could bring cases against unfairly traded beef imports causing injury to the producers. Since the live animal is generally not imported (pork is an exception), livestock producers would be precluded from bringing cases against meat imports, unless their industries happened to be sufficiently vertically integrated under the ITC's present policy.

I appreciate the opportunity to testify before you today on behalf of the National Pork Producer Council, and I will be happy to answer any questions you may have.

Mr. BEDELL. Thank you.

Mr. Volkmer.

Mr. VOLKMER. Thank you, but I will pass at this time. I just want to thank all the witnesses for being here. Hopefully, we can work with them in trying to get the ITC ruling changes. We need this legislation. As many of you have already said, the ITC decision just doesn't make sense, and you wonder how they came to that conclusion. I join with Congressman Olin and perhaps the chairman can arrange a meeting whereby we can discuss it and see what type of logic they used to come to the conclusion that they did.

There is no question, as Mr. Phillips has testified as far as pork producers are concerned, that they are losing money as a result of that ITC decision, and the subsidized pork and hogs are coming from Canada. I well remember the trip that the chairman and I made up to Canada back this last spring in regard to this and trying to talk to some of them up there.

I hate to see this ruling continue without being corrected. If it isn't corrected, it not only bodes ill will for our pork producers, but possibly much else also. We can see other processed products coming in subsidized by their countries and injuring our agricultural sector which is already injured at this time.

I really have no—unless, Jim, do you have any other suggestions as to what we could be doing?

It is kind of frustrating, you know, because we don't have jurisdiction over the bill. The bill goes to the Ways and Means Committee. They get trade legislation up here. People come to us and tell those of us who are trying to do something about this unfair and subsidized products that we are protectionist and that we are going to ruin trade. In fact, I have some farm organization saying that if we take this, then we might lose other trade with Canada that we are shipping up there, soybeans and things like that for feed.

I don't consider myself protectionist, and I think it is very frustrating that when we look at an organization of the Government, like the ITC, which is supposed to have been set up to take care of this type of situation so we don't have to have the legislation and it fails to do it, it is very frustrating to us to not be able to go ahead and do something. In other words, some of us would like to see this legislation move right through so we could get this corrected.

Do you have any other suggestions?

Mr. PHILLIPS. I agree with you, Congressman. I think that we have difficulty as farmers seeing the logic of the ITC ruling that hogs and pork aren't really the same product because there is only one——

Mr. VOLKMER. You don't get pork from any place else, do you?

Mr. PHILLIPS. Right.

Mr. VOLKMER. I would like to ask one of their people one time where else you can get pork. Where can you get a pork chop from besides a hog?

Mr. PHILLIPS. Right.

Mr. VOLKMER. I just don't know.

Mr. PHILLIPS. And as farmers, we certainly do thank you for your continued interest in our farm situation.

Mr. SANDSTROM. Might I add, Congressman Volkmer, that there are a number of members of the Ways and Means Committee who

do have agricultural interests and agricultural constituencies. If the committee members could work with some of those people, I think you might be able to make some progress.

I would point out that when you do talk to them, you should make clear to them that what we are doing in this bill, what H.R. 3328 does is not extend the law. We are basically clarifying legislative intent which was created in 1979. I think people should be very clear on that.

Mr. VOLKMER. OK. Thank you.

Mr. BEDELL. Mr. Olin.

Mr. OLIN. Mr. Chairman, I was just reading from the booklet that outlines the determination of the Commission here on this question. It is interesting to note that they apparently, as Mr. Sandstrom was saying, considered these hogs as being a separate industry from processed pork—either unprocessed or processed.

What they basically said here was that the basis for their ruling, as I understand it, is that as a practical matter, they did not expect that there was much of a channel for slaughtered animals to come into the country and that, as a practical matter—well—just let me quote from the report. It says:

> Additional importers of live swine are unlikely to be new importers of unprocessed pork. Further, as a practical matter, the means of shipment of live swine are not readily usable for the transport of unprocessed pork. Therefore, for substantial diversion to occur, new channels of transportation, distribution, and sales would have to be put into place. The statute does not permit us to speculate whether such developments will occur. Therefore, a finding of a threat is too speculative for us to make at this time.

There is, apparently, a statutory problem here. Your bill may be correcting that. But it seems very far fetched not to believe that over a period of time that another channel of distribution, if profitable enough, will certainly develop and occur.

I am just wondering, Mr. Sandstrom, it has been quite a few months since this determination. They made the determination in July of this year. It is now 3 or 4 months later. Do I take it from your testiomony that there has been a significant increase in pork shipments to the United States?

Mr. SANDSTROM. Yes; they have. The duties on hogs actually didn't go into effect until August, close to the middle of August, but even in August, as I said, we saw already a 10-percent increase and in September it was a 20-percent increase.

Mr. OLIN. The threat of the countervailing duties has been known for some time. So, you have had maybe 6 months here where the Canadian industry was on notice that there was going to be some action, at least on the live animals.

Mr. SANDSTROM. That is true, but in the beginning stages of the case, what the Canadians did was bring across a lot of hogs. Now you are seeing again the shift. Hogs are suddenly down and pork is up.

By the way, on a carcass equivalent basis, the Canadians have been bringing in as many or more hogs in the form of pork than they were previously bringing across hogs. So, they already have established these channels of distribution, as these current figures show. This won't take much time to do. In fact, it is occurring right now.

Mr. OLIN. Thank you very much.

Mr. Chairman, this sort of accentuates even again the need to perhaps get together with the ITC and understand what it is that is keeping them from arriving at a determination that seems to make pretty good common sense.

Thank you.

Mr. BEDELL. Thank you, Mr. Olin.

Mr. Penny.

Mr. PENNY. Mr. Chairman, I simply want to thank the witnesses for their testimony. As a cosponsor of the legislation, it is good to know that we are on the right track, and we appreciate your support.

Mr. BEDELL. Mr. Sandstrom, was there anything in the way the action was brought that would cause the ITC to look at this case as to whether it was damaging to the packing industry rather than damaging to the pork industry? Did the packers bring one part and the pork producers another?

Mr. SANDSTROM. One of the somewhat strange things about this case is that this was a serious issue in the beginning and there was a question, for instance, of standing. That is, could representatives of hog producers bring a case that involves fresh chilled and frozen pork? We argued that we could. That part was argued and briefed in the preliminary stages of the case.

However, at the same time, Wilson Foods Corp. came in as a co-petitioner so we mooted, in effect, that argument.

What happened after the initial determinations also was that the Court of International Trade handed down a case which reaffirmed the application of single continuous line of production, at least through dicta. By the time we got to the hearing at the ITC—and I should also point out the Department of Commerce did an excellent job of looking at the link between the two products—so, we had sort of assumed that that issue had become moot. In fact, there were no questions of either commissioners during the final hearing stages.

As I said, we thought that question was moot, and we and everybody else in town including the staff, I think, were somewhat surprised that it became an issue again at the end. We are not quite sure why, but that is in fact what happened.

Mr. BEDELL. The ITC report says, "A finding of threat is, therefore, too speculative for us to make at this time." Does that mean that we might be able to show later that originally it was too speculative but that now we have shown because of what has happened that it is no longer speculative?

Mr. SANDSTROM. I think it would be very much easier today to win a threat case just given the last 2 months' import figures. One issue, though, that comes up in front is whether we could even file a case involving fresh pork because they would have to reexamine that question again. If they continue to apply the same policy they have applied in the past, we wouldn't even be able to bring the case. We would obviously have to get packers to join us to do it.

But, yes, I think we could win on the threat side.

Mr. BEDELL. Is ITC policy or the law such that if the ITC were to decide that there now is indeed a threat that they could change their ruling?

Mr. SANDSTROM. There are two issues here. One issue is do we as hog producers have standing to bring a case involving fresh chilled and frozen pork? In a sense, that issue hasn't changed. Their determination of that issue hasn't changed at all.

Mr. BEDELL. So, you still have standing.

Mr. SANDSTROM. No; we couldn't bring the case.

Mr. BEDELL. You do not have standing.

Mr. SANDSTROM. No; because that is part of the result of this decision. If a packer brought this case, the answer to your question, do we now have sufficient evidence to show threat of injury so that we could get an affirmative injury finding, my feeling is there we probably do. We might want to wait another month or two to see how much more they increase so if a case was filed and accepted, I think we have a much better chance of winning the injury argument.

Mr. BEDELL. But does the injury have to occur to packers, or can the injury occur to producers?

Mr. SANDSTROM. Right now, the Commission is only looking at the effect of fresh chilled and frozen imports on packers, because they have said they are really one industry completely separate from hog producers and imports of live swine.

Mr. BEDELL. So, even if a case were brought and you could show that imports were damaging producers, it would not do any good to show that. Is that correct?

Mr. SANDSTROM. If they maintain the same policy, my feeling is that if they really sit down and think about what they did and they listen to some of the testimony and the concern that is provided here today, they may try to reconsider that. There was a dissent. There were only three Commissioners voting, and there was a dissent in the case which pointed out that the legal relationships are much less relevant than how much of the raw material is devoted to the production of the processed product. So, we would only need to get a swing of one vote, in a sense, to have them reverse that.

Mr. BEDELL. Mr. Smith, did you have any questions?

Mr. SMITH. No, thank you, Mr. Chairman.

Mr. BEDELL. Well, we thank you very much for your testimony and for your efforts in this regard.

Mr. SANDSTROM. We appreciate the opportunity to be here. Thank you.

Mr. BEDELL. Thank you.

Our next panel consists of Mr. Robert Wray, attorney, Robert Wray Associates; and Mr. Joe Dorn, attorney with Kilpatrick & Cody, both from Washington, DC.

Mr. Wray, did you want to go first? We would ask you to try to hold your testimony to 5 minutes so as to give us time for questioning, if you possibly could. Your entire statement will be made part of the record, whether you read the whole thing or summarize.

STATEMENT OF ROBERT T. WRAY, ATTORNEY, ROBERT WRAY ASSOCIATES

Mr. WRAY. Good morning, Mr. Chairman, and thank you. I will try to summarize my written statement in the 5 minutes.

My name is Robert Wray. I am an attorney.

For the last several years, my office has been representating the United States sheep industry in efforts to obtain relief from the dumping of New Zealand lamb in the United States market. These dumping practices have been funded in large part by huge subsidies from the New Zealand Government.

In April 1984, we filed both antidumping and countervailing duty cases with the Department of Commerce and the International Trade Commission. The petitions and the exhibits were extremely detailed and were a result of more than 6 months of intensive study and documentation of the adverse effects that imports of New Zealand lamb have inflicted on an already seriously weakened domestic lamb industry.

At preliminary hearings before the ITC, we produced extensive evidence of substantial subsidies, a selling price of New Zealand lamb much lower than the cost of production, and evidence of significant underselling of domestic lamb. We provided undisputed evidence that American sheep farmers were losing money and were sending their breeding lambs to slaughter to increase their cashflow. As a result, our Nation's sheep herd was declining year after year and was at the lowest level in the history of this country.

We provided evidence and testimony of New Zealand's predatory pricing in selected key markets. For example, Easter, 1983, New Zealand hit the New York and Los Angeles markets right at the Easter season with massive volumes of lamb legs and with a coupon program that offered retail purchasers a cash refund of $2 per leg of lamb. This amounted to a further reduction of 40 cents a pound from a wholesale price that was, on average, already 60 cents a pound under the domestic leg price. The effect on domestic prices was devastating and the industry suffered enormous losses.

From December of that year through the spring of 1984, New Zealand announced three major price decreases funded through subsidies as well as major targeted advertising and giveaway promotions. Nonetheless, a mere 45 days after the petitions were filed, by a 4-to-2 vote the ITC terminated the proceedings by finding that there was no reasonable indication of injury by reason of New Zealand lamb imports.

In support of this outrageous finding of no possibility of injury from New Zealand, the ITC asserted that the industry is not experiencing injury and even if it was, New Zealand was not possibly contributing to it. The ITC, disregarding its own staff report, summarily reasoned that there was no compelling evidence of herd liquidation, that the volume of imports was only 5 percent of the market, and that it should be expected that frozen lamb would sell for less than domestic lamb.

In our view, the ITC presents obstacles to the effective utilization of the relief from unfair international trading practices that is singular among our trading partners and is so formidable that U.S. agricultural interests are reluctant to even attempt to utilize these remedies. In the May 21, 1985 issue of the Journal of Commerce, ITC Commissioner Seeley Lodwick highlighted the fact that the U.S. agricultural sector has been successful in obtaining relief in only 1 out of 11 cases during a 3½ year period. This contrasts sharply with the results obtained in the cases involving other sec-

tors of our economy, where just less than 50 percent of the cases were afforded relief.

We think this results in large part from two factors. The first is that regardless of sector, the ITC requires a level of proof and a measure of damages which is, in practice, much more rigorous than our trading partners and much more rigorous, we believe, than the law intends.

Second, the ITC does not seem to have a solid understanding of the agricultural sector. The ITC does not seem to understand the vulnerability of prices for perishable products to relatively small but strategically placed and timed increases in supply. It does not understand the relationship between producers and processors. It does not understand the long-range investment of agricultural producers for short term returns.

The ITC made much of the increase in domestic production of lamb meat during 1983 and 1984, stating that this was an indication of a healthy and thriving industry. Our explanation and indeed the admonition of the Senate Finance Committee—and the House Ways and Means Committee in the legislative history to the Trade Act of 1979—that increased production of livestock is generally an indication of herd liquidation as a result of lower prices and a symptom of ill health, not profitable business, were entirely ignored.

In the lamb meat case, the ITC regarded the nearly 5 percent market share of imports to be too small to have an adverse effect on the industry. They did this without benefit of an investigation into the elasticity of demand and supply, but based it rather just on an intuitive presumption. On the other hand, a few months later, the ITC preliminarily found that an import market share of just over 2 percent in pork and swine, less than 1.5 percent of stainless steel from Spain, and just over 2 percent of cast iron fittings from Brazil were sufficient to make a preliminary affirmative determination.

If import volumes of less than 2 percent in the steel industry are not too small to affect prices, then why is nearly 5 percent too small in the lamb industry? If pork imports of around 2 percent can affect pork prices, why is it impossible that 5 percent cannot affect the lamb industry? The ITC position is untenable.

In the lamb case, the ITC found that frozen lamb cuts were like fresh lamb carcasses and cuts and that the industry should be defined as sheep producers as well as the feeders, the packers, and the processors. In the pork case, however, several months later, the ITC found that pork and live swine were different products and that packers were not part of the industry. Producing live swine and hog growers were not part of the industry producing pork. Baffling.

To add further confusion, in a recent case involving ground fish from Canada, the ITC found that fish filets were different products than fresh whole fish, that fresh whole cod is like a fresh whole haddock, but unlike a cod filet. Furthermore, the ITC noted that a fresh cod filet is like a fresh haddock filet, but is not like a frozen cod filet.

The possibilities of active minds at work, unbounded by the realities of the marketplace, are seemingly endless. It would all be a

cause of wonderment, even bemused awe, if it wasn't your industry's well-being or survival at stake, in which case it becomes a matter of grave concern. What is the fisherman, the pork producer, the sheep farmer to do? How can they protect themselves from the predation of foreign government subsidized dumping?

Something clearly needs to be done to encourage and to assist the ITC in more effectively and coherently administering the letter of the law and the intention of the Congress with respect to injury determinations. This is particularly critical in cases involving agricultural products.

In my prepared statement, I have suggested four initiatives for consideration by the Congress. I hope the subcommittees will consider these proposals.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Wray follows:]

OCTOBER 30, 1985

STATEMENT
OF
ROBERT T. WRAY

LAW OFFICES
ROBERT WRAY ASSOCIATES

THE HOUSE AGRICULTURAL SUBCOMMITTEE
ON DEPARTMENT OPERATIONS, RESEARCH, AND
FOREIGN AGRICULTURE, AND THE SUBCOMMITTEE
ON LIVESTOCK, DAIRY, AND POULTRY

For the last several years my office has been representing the U.S. sheep industry in efforts to obtain relief from the dumping of New Zealand lamb in the U.S. market. These dumping practices have been funded in large part by huge subsidies from the New Zealand government. In April 1984, we filed both antidumping and countervailing duty cases with the Department of Commerce and the International Trade Commission (ITC). The Petitions and the Exhibits were extremely detailed and were a result of more than six months of intensive study and documentation of the adverse effects that imports of New Zealand lamb have inflicted on an already seriously weakened domestic lamb industry.

The production and sale of lamb meat, an agricultural industry, has distinctly different economic characteristics from those governing industrial and other commercial enterprises. These differences arise from the unusually free market pricing mechanism and the presence of many relatively small suppliers who are forced to sell their perishable products at times and prices which they cannot control. Among the livestock industries, lamb meat has its own peculiar characteristics, particularly with regard to the dynamics of the price setting mechanism. The foremost

differences are the seasonal and cut specific nature of the demand for lamb.

The price of live lambs and the health of the industry is determined principally by supply and demand at consumer levels which is expressed as the price which consumers are willing to pay at any one time for each of the domestic lamb cuts. The strength of the demand and consequently the price for each of these individual cuts tends to vary along seasonal patterns during which time the total price for the carcass is driven primarily by the demand for one or another of the major cuts. For example, legs which comprise 33% of the lamb by weight are in very strong demand during the spring and especially around Easter. Any unusual increase in supply, particularly if sudden or unexpected, can, and has had an unusually strong depressing effect on leg prices and consequently on the price of dressed carcasses and live lamb during that season. These effects are felt throughout the year.

At preliminary hearings before the ITC, we produced extensive evidence of substantial subsidies, a selling price of New Zealand lamb much lower than the cost of production, and evidence of significant underselling of domestic lamb. We provided undisputed evidence that American sheep farmers were losing money and were sending their breeding lambs to slaughter to increase their cash flow. As a result, our nation's sheep herd was declining year after year and was at the lowest level in the history of this country. We provided evidence and testimony of New Zealand's predatory pricing in selected key markets. For example, in Easter, 1983, New Zealand hit the New York and Los Angeles markets right at the Easter Season, not only with massive volumes of legs, but also with a coupon program that offered retail purchasers a cash refund of $2.00 per leg of lamb. Given the average weight of the New Zealand leg of 5 pounds, this amounted to a further reduction of $.40 a pound from a wholesale price that was on average already $.40 a pound under the domestic leg price. The effect on prices was devastating and the industry suffered enormous losses.

From December 1983 through the Spring of 1984, New Zealand announced three major price decreases as well as major targeted advertising and giveaway promotions. Nonetheless, a mere 45 days after the Petitions were filed, by a vote of 4 to 2, the ITC terminated the proceedings by finding that there was

no reasonable indication of injury by reason of New Zealand lamb imports.

In support of this outrageous finding of no possibility of injury from New Zealand, the ITC asserted that the lamb industry is not experiencing injury, and even if it was, New Zealand was not possibly contributing to it. The ITC summarily reasoned that there was no compelling evidence of herd liquidation, that the volume of imports was only 5% of the market, and that it should be expected that frozen lamb would sell for less than domestic lamb.

So long as the domestic lamb meat industry is viable, New Zealand is unable to dispose of significant amounts of lamb. Given the European VRA on New Zealand lamb and the increasing sheep herds in New Zealand, new markets must be established. Only with the demise of the U.S. domestic industry (which is now at historic lows) will New Zealand have a position in our market that its national interest appears to require.

Whatever sympathy one has for New Zealand's plight, to use subsidies and dumping ploys to destroy our domestic industry is unfair to the hundreds of thousands of sheep farmers and in the longer term unfair to the American consumer.

The problems and frustrations that the sheep growers have experienced at the hands of the ITC has been shared by other groups in our free market agricultural sector who have tried to make use of the trade laws which our government has labored so many years to provide. The denial of relief by the ITC, forces the lamb industry and other agricultural sectors to think of political remedies and quotas. In my view this is unfortunate and, in any case, would not solve the problem of targeted and disruptive marketing practices of those, who like New Zealand, find it useful in their national interest to disrupt our agricultural sector.

From May of 1984, when the ITC abruptly denied lamb industry access to the relief that Congress and the GATT have provided for violations of the subsidies and dumping codes, we have been engaged in a series of expensive and time consuming appeals. Six months ago, the Court of International Trade (CIT) reversed the ITC's actions in the lamb case, but the ITC has insisted on appealing the CIT's decision to the Circuit Court of Appeals. Now six months later, we

are just beginning the exchange of briefs. In the interim, many sheep farmers have gone into bankruptcy. The sheep herds of this country have continued to shrink and one of the country's largest lamb packers has closed its doors and terminated its business. We are still years away from getting the ITC to focus on, much less appreciate, the fact that New Zealand lamb is hurting the domestic sheep industry by its illegal subsidies and dumping practices.

Interestingly enough, in a proceeding which did not require the ITC's participation, we were successful in obtaining a significant countervailing duty of approximately 25% in just over four months. This was made possible in countervailing duty cases since New Zealand's status as a country entitled to the injury test in subsidies cases was terminated on April 1, 1985. For dumping cases involving New Zealand and for virtually every other subsidy and dumping case the ITC's injury determinations are required to obtain relief.

In our view, the ITC presents obstacles to the effective utilization of the relief from unfair international trading practices that is singular among our trading partners, and is so formidable that U.S. agricultural interests are reluctant to even attempt to utilize the "remedies." In the May 21, 1985, issue of The Journal of Commerce, ITC Commissioner Seeley Lodwick highlighted the fact that the U.S. agricultural sector has been successful in obtaining relief in only one out of eleven cases during a three and a half year period. This contrasts sharply with the results obtained in the cases involving other sectors of our economy, where just less than 50% of the cases were afforded relief. We think this results in large part from three factors. The first is that regardless of sector, the ITC requires a level of proof and a measure of damages, which is in practice much more rigorous than our trading partners', and much more rigorous, we believe, than the law intends. For example, in making a preliminary decision to fully investigate cases presented to it, the ITC appears to require a level of proof that is very close to the level of proof required for a final determination. Secondly, and in our opinion improperly, the ITC focuses on whether the affected U.S. industry is, independently of the effects of imports, healthy or hemorrhaging. If it is not hemorrhaging, the trend of the ITC's decisions is that a prerequisite for relief is absent. The law, however, is directed not toward whether an industry is healthy, but whether imports

are adversely affecting an industry to a degree which cannot be considered insignificant. Thirdly, the ITC does not seem to have a solid understanding of price dynamics in the agricultural sector. The ITC does not seem to understand the vulnerability of prices for perishable products to relatively small but strategically placed and timed increases in supply. We provided extensive evidence in the lamb petition demonstrating how increases in the supply of lamb in the three to four week period before Easter can have a devastating effect on lamb prices. But the ITC chose to overlook this factor and focused on the relatively small 5% market share of lamb imports, all bundled together without regard to cut, and cast in forms of annualized market share.

The ITC made much of the increase in production of lamb meat during 1983 and 1984, stating that this was an indication of a healthy and thriving industry. Our explanation and indeed the admonition of the Senate Finance Committee that increased production of livestock is generally an indication of herd liquidation as a result of lower prices and a symptom of ill-health, not profitable business, were ignored. In the lamb meat case, the ITC regarded the level of imports to be too small to have an adverse effect on the industry. They did this upon consideration of the case in a brief period and without benefit of an investigation into the elasticity of demand and supply, but rather just an intuitive presumption. On the other hand a few months later the ITC preliminarily found that an import market share of just over 2% in the pork and swine industry was sufficient to have a reasonable indication of injury, and just a few months previous to that, the ITC made an affirmative preliminary determination that less than 1.5% of Stainless Steel Strip from Spain and just over 2% of Cast Iron Fittings from Brazil were sufficient to make a preliminary affirmative determination.

If import volumes of less than 2% in the steel industry are not too small to affect prices than why is more than 4% too small in the lamb industry. If pork imports of around 2% can affect pork prices, why is it impossible that 4% cannot affect the lamb industry? The ITC position is untenable.

In the lamb case the ITC found that frozen lamb cuts were like fresh lamb carcasses and cuts and that the industry should be defined as the sheep producers, the feeders, the packers, and the processors. In the pork case, however, the ITC found that pork and live

swine were different products and that the packers were not part of the industry producing live swine and hog growers were not part of the industry producing pork. Baffling.

To add further confusion, in a recent case involving ground fish from Canada, the ITC found that fish filets were different products than fresh whole fish, that fresh whole cod is like a fresh whole haddock, but unlike a cod filet. Furthermore, the ITC noted that a cod filet is like a haddock filet, but is not like a frozen cod filet. The possibilities of active minds at work, unbounded by the realities of the marketplace, are seemingly endless. It would all be a cause of wonderment, even bemused awe, if it wasn't your industry's well being or survival at stake, in which case it becomes a matter of grave concern. What is the fisherman, the pork producer, the sheep farmer to do? How can they protect themselves from the predation of foreign government subsidized dumping?

Something clearly needs to be done to encourage and assist the ITC in more effectively and coherently administering the letter of the law and the intention of the Congress with respect to injury determinations. This is particularly critical in cases involving agricultural products. I suggest for consideration the following:

1) that an inquiry be undertaken by the USTR or other appropriate agency to determine the results of injury determinations by other members of the GATT. We believe that the interpretation and results by the ITC are probably far more rigorous than those employed by our trading partners.

2) that the Congress give favorable consideration to the enactment of the attached amendment to the Trade Act of 1979 which would prohibit the ITC from making a negative determination in agricultural cases solely because the volume of imports is small or declining.

3) that the Congress request that the ITC conduct an investigation under Section 332 of the Tariff Act of 1930 (19 USC 1332) into its methods and

criteria for making injury determinations in agricultural cases with specific reference to: a) the perameters of supply and demand dynamics of freely traded perishable products; b) the effects of market specific or sub-product specific increases in supply on price levels of raw products from which the sub-products are derived; c) the effects of underselling on the price level of domestic perishable commodities, and; d) economic indicia of injury to producers of agricultural products.

4) That it enact the amendment which is the subject of these hearings.

We hope the ITC aided by the Congress will promptly begin more informed and even-handed consideration of agricultural cases.

(Attachment follows:)

PROPOSED AMENDMENT TO THE TRADE AGREEMENTS ACT OF 1979

Add to 19 USC 1677 (7)(D) new subsection (iii);

§1677 DEFINITIONS; SPECIAL RULES.

(7) Material Injury.-

(D) Special Rules for Agricultural Products

(iii) The Commission shall carefully consider the sensitivity of agricultural prices to any increase in supply and shall not determine that there is no material injury merely because the market share of imported merchandise is small or is declining.

Mr. BEDELL. Thank you, Mr. Wray.

Our colleague, Doug Bereuter, is here at this time. With your permission, Mr. Dorn, you can stay where you are, but we will let him go ahead and testify.

We are glad to have you here with us, Doug. We appreciate your interest in this issue.

STATEMENT OF HON. DOUG BEREUTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. BEREUTER. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittees, I appreciate this opportunity to join you today to discuss a couple of things about the International Trade Commission decision on imported swine and pork products from Canada. Since I am one of the original cosponsors of H.R. 3328, I feel it is necessary to express some of my views on this issue at this time.

I am sure you know, but for the record, H.R. 3328 would require the International Trade Commission to determine whether imports are causing material injury to a domestic industry, to treat producers of raw products and processed agricultural products as members or components of the same industry with the requirement that the more advanced product be produced from a continuous line of production from the raw product.

I hope that this legislation will be passed into law quickly. It is extremely difficult for me to go back to my constituents and inform them that the Government has finally imposed countervailing duties on live Canadian pork imports, but it neglected or at least failed, to put these restrictions on pork product imports. It is like telling them a good-news-bad-news joke, but none of them are laughing.

Under the 1979 Trade Agreement Act, producers of raw and processed commodities are part of the same industry where there exists a single continuous line of production. Recently, however, the ITC ruled that hog producers and pork packers were not producers of a line product because there was not sufficient legal integration between the growers and the packers.

I would like to see them convince one of my pork producers in my district that such a rule is justified. It would be difficult to persuade one of my farmers that there is not sufficient integration while he is unloading a truck full of hogs at a pork packing plant and, at the same time, a semi is loading up a truck full of racked, chilled pork on the other side of the building.

Hogs are transformed to fresh chilled and frozen pork by a process which represents a wholly single, continuous line of production to an extent equal to or greater than all industries previously examined by the ITC. It is an obvious truism that hogs are completely devoted to the production of pork, whether they like it or not, and pork can only be produced by hogs. That is the truism.

Although H.R. 3328 has been referred to the Ways and Means Committee, pork import reform is a bigger issue among farmers in my district than tax reform. When I have talked to some of the hog growers in my district in recent months, they are not so much worried about the types of deductions they will receive next year—if

they are still in business next year—they ask why Canada should be allowed to dump their pork products in our market. This issue has generated just about as much interest as the 1985 farm bill in my State, and our State does rank fifth in the Nation in the number of hogs and pigs on hand. It also ranks fifth in the value of all hogs on the farm, cash receipts, and commercial hogs slaughtered.

The consequence of this decision to Nebraska's pork industry and to other agriculture products in future cases would be very detrimental. It is obvious that the Canadian producers have and will continue to circumvent this decision by simply slaughtering their hogs in Canada and shipping their products to the United States. In the process, we are also losing jobs for U.S. packers.

I should point out that other agriculture producers may be similarly affected by this decision in the future as well.

The ruling by ITC should be either reconsidered and expanded, or it should never have been offered in the first place. I think it is only fitting that I point out to the subcommittees some figures that I obtained from the Department of Agriculture.

We have imported 1,322,015 live hogs in 1984, an increase of about 874,624 live hogs imported from the previous year. Also in 1984, we have imported about 356 million pound of pork products from Canada alone, an increase of about 79 million pounds from the previous year. These figures indicate that our producers are suffering significant price pressures due to the massive increase of live hog and pork product imports from Canada.

I would like to take this opportunity to praise my colleague and my neighbor from Iowa, Mr. Bedell, for introducing a bill that would send a clear message to the ITC as to the definition of commodities and the purpose of our trade laws. He has worked very diligently and effectively in presenting this bill, and you will continue, Mr. Chairman, to have my full support. Producers of raw and initially processed agricultural products who are economically dependent must be considered as producers of like products for the purposes of trade laws.

The Nebraska pork producers and a vast majority of hog producers in our State very much appreciate the legislation you have offered. I believe, as you do, that this bill is an absolute necessity in order to assure that the production of pork remains a viable segment of our agricultural economy and that the processing takes place in the United States.

Mr. Chairman, thank you for the opportunity to appear before these joint subcommittee hearings. I hope my views will give you some additional information and material to use as you push to move this legislation to the House floor and to its passage by the Congress.

Thank you, Mr. Chairman.

Mr. BEDELL. Thank you, Mr. Bereuter.

Are there any questions of Mr. Bereuter before he leaves us?

[No response.]

Mr. BEDELL. If not, we really appreciate your testimony very much.

We have been joined by the chairman of the Livestock, Dairy, and Poultry Subcommittee who is cosponsoring these hearings. Tony, do you have any statement you wish to make at this time?

STATEMENT OF HON. TONY COELHO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COELHO. Mr. Bedell, I appreciate very much your starting these hearings. I am sorry I was a little bit late. This is something that I am particularly concerned about as I do have pork production in my area and in California, so I am concerned about this from an overall point of view.

When we were able to get the Wine Equity Act through in the last Congress, one of the provisions that we put in was to in effect say that grapegrowers should be considered when there is injury and not just the wine processors. It is nice for the wine processors, but they couldn't be in there complaining if there wasn't somebody producing the grape for them to make the wine out of. It doesn't make any sense to me that you eliminated the producer.

That is the case today, except for grapes, for most producers. I think it is unfair, I think it is wrong, and we tried to get it changed the last time, and we couldn't get it through. The administration strongly opposes us on that. Ultimately, this administration and the Congress have to recognize that producers need to be party to these complaints just like a processor needs to be party to it.

In this particular case, that is what is happening, and we need to change that law and need to be aggressive about it. I want to compliment Mr. Bedell on your legislation and your attempts to try to do it. Obviously, as you know, our committee doesn't have jurisdiction but it is something hopefully that we can get the Ways and Means Committee to consider, or we can get it attached on something that needs to move as I did with the Wine Equity Act.

However, it is something I think is critical, and I would like to question Mr. Wray when the time is appropriate.

Without objection, I would like to insert at this time my statement, if I can.

Mr. BEDELL. Without objection, so ordered.

[The prepared statement of Mr. Coelho follows:]

OPENING REMARKS OF THE HONORABLE TONY COELHO, CHAIRMAN

SUBCOMMITTEE ON LIVESTOCK, DAIRY, AND POULTRY

ITC HEARING

OCTOBER 30, 1985

It is well known that the American farmer is in deep trouble. An important element of today's farm crisis is the steady erosion of U.S. agricultural exports and the impact of foreign subsidized sales of agricultural commodities which are entered into our domestic stream of commerce.

The purpose of today's hearing is to hear testimony regarding the recent International Trade Commission decision on imports of hogs and pork products from Canada. However, the problems which have arisen do not confine themselves solely to the hog and pork trade. In fact, similar problems have evolved in many of our agricultural commodities, including, among others, wool, lamb, fruits, and wine.

Of the eleven unfair trade injury investigations concerning agricultural products filed at the ITC in the period 1982 to mid-1985, only <u>one</u> case ended in an affirmative determination. Thus, while only <u>9%</u> of agricultural cases have been successful, an average of about <u>40%</u> for cases covering industrial products have successfully prevailed. These disappointing results relating to the manner in which agricultural commodities are treated is typified by the ITC's recent countervailing duty decision involving subsidized hogs and pork products from Canada.

The consequences of this decision to both the pork industry and to producers of other agricultural products in future cases involving closely aligned raw to processed agricultural products could be damaging in the extreme.

Agricultural commodities which are raw or initially processed before sale to processors or end users must be properly considered together with the raw or initially produced product. I commend Congressman Bedell for introducing legislation regarding this continuous line of production concept which I believe is a step in the right direction towards solving this apparent loophole in the law.

Under existing law, the President has broad powers to address unfair foreign trade practices. As recently as 1984, the Congress significantly expanded Presidential retaliatory powers under the Trade Act of 1974. If the President continues to ignore these powers, then no amount of Presidential authority will have any meaningful impact. Another defect common to a number of trade law provisions is the excessive discretion provided to the Executive agencies when addressing new trade-distorting and injurious practices of foreign governments. In many instances, this authority results in politicizing decisions that should be based solely on the merits. Further, import relief under Section 201 of the Trade Act of 1974 should be granted in conjunction with a comprehensive strategy to ensure that temporary protection results in improved long-term competitiveness for all products in the line of production.

With these brief remarks, I would like to welcome and thank the witnesses for their willingness to come here today and enlighten us as to the concerns which face the industry.

Mr. COELHO. I would like to make one other comment, if it is all right, that in my statement I point out that of the 11 unfair trade injury investigations concerning agricultural products filed at the ITC in the period 1982 to mid-1985, only 1 case ended in an affirmative determination. That is only 9 percent of the agriculture cases which have been successful. An average of about 40 percent of industrial cases have been successfully pursued, however.

These are disappointing results related to the manner in which agricultural commodities are treated by the ITC. I think it is something that this committee has a right to keep questioning and pursuing, and I am willing to do it from the jurisdiction of my subcommittee and I know you are from the jurisdiction of your subcommittee. It is a major problem for agriculture, and I would hope that the agriculture groups would move it up on their priority lists and help us resolve it.

Mr. BEDELL. Thank you very much.

We also have a request from Congressman Kindness that his statement be made a part of the record. Without objection, that will also be entered in the record.

[The prepared statement of Mr. Kindness appears at the conclusion of the hearing.]

Mr. BEDELL. Mr. Dorn, we appreciate your patience here, and we will now hear from you.

STATEMENT OF JOSEPH W. DORN, ATTORNEY, KILPATRICK & CODY, WASHINGTON, DC

Mr. DORN. Thank you, Mr. Chairman and members of the subcommittees.

My name is Joe Dorn. I am with the law firm of Kilpatrick & Cody. I am appearing today on behalf of the Oregon Caneberry Commission, the Washington Red Raspberry Commission whose red raspberry growers I recently represented in an antidumping case against Canada at the International Trade Commission and who I am now representing in a countervailing duty case against imports from Canada. I am also here on behalf of the Cling Peach Advisory Board of California and the Pacific Coast Canned Pear Service, Inc., whose canning peach and canning pear growers have become increasingly concerned about imports in the last several years of canned peaches and canned pears.

I know you are familiar with the canned peaches and the canned pears that I will be talking about. These are red raspberries packed in a bulk container.

Mr. COELHO. You have some in that box?

Mr. DORN. I have some in the box.

Mr. COELHO. We have to inspect those products, I think. [Laughter.]

Mr. DORN. I didn't bring any cream or sugar, but——

Mr. COELHO. No, I like them in the raw.

Mr. DORN. We have them.

In my prepared testimony, I have talked about the products of concern. I have talked about the current law in terms of definition of domestic industry. I have talked about the experience that the red raspberry growers had before the Commission, and I have

talked about the experience that the canning pear and canning peach industry had before the Commission in a recent case.

Given the constraint of time, what I would like to do is go to what I see as the crux of the problem.

What I see as the problem here is that the new general counsel for the International Trade Commission is advising the Commissioners that they have gone out on a limb in these agricultural product cases. The general counsel is saying that, as she reads the statute and the legislative history, there really may not be any case where the growers should be included in an industry producing a processed agricultural product. She is saying, Commissioners, be extremely careful. You have gone out on a limb. Come back to the tree trunk because I am just not sure the law really provides a place for growers in these cases.

In my view, the Commission has placed the carton before the horse. The fact is that many raw agricultural products can only enter the stream of commerce after they have been semiprocessed or packaged. The mere fact that a raw product is semiprocessed or placed in a carton does not mean that the growers of the contents of that package are not the producers of it.

I disagree with the general counsel's interpretation of existing law. I think that if you read the statute it says that the domestic producers as a whole of a like product are the domestic industry. I think that the growers as well as the processors are producers of the product. The statute doesn't exclude them.

For example, the red raspberry grower takes 3 years in the cultivation of a plant to produce a red raspberry which is intended to end up in this container. All the processor does is wash the berries and dump them into the container and seal it. In my view, the red raspberry grower is the producer of this product more than the packer. But the general counsel at the ITC says, wait a minute, the statute might not allow it.

Now, the Commission has two concerns, as I see it, in excluding the growers. First, the Commission says, well, if you include the growers, that might skew the data about the industry. We can use the grape case as an example where the Commission said that the grape grower not only makes grapes that go into wine; he also makes grapes that go to raisins or table grapes. How do you know that the wine imports are causing the problems? Maybe it is the depressed prices for raisins or table grapes. As a result, we just won't consider the growers of grapes.

In my view, that doesn't make any sense. I think if you include the growers, you consider their situation, in some cases the growers condition is more important than that of the processor and in other cases the processors condition might be more telling in terms of the weight of the evidence. By that I mean, in the case of red raspberries, I think the growers economic condition is more important because they add most of the value of the product at issue. In the case of grapes, I don't think you can ignore the wineries, and you have to give more weight to the wineries than you would to perhaps processors of other products. But you don't just exclude the growers from consideration altogether. It is more a matter of how much weight you give to the growers versus the weight you give to the condition of the processors.

My clients support the legislation that is being considered today. In my prepared statement I have made a couple of minor suggestions that I see as perhaps improvements, and I appreciate the time to appear here. I would be happy to answer any questions.

[The prepared statement of Mr. Dorn follows:]

Before The
U.S. House Of Representatives
Committee On Agriculture
Subcommittee On Department Operations,
Research, And Foreign Agriculture

The Inclusion Of Growers Within U.S. Industries Producing Processed Agricultural Products In Antidumping And Countervailing Duty Cases

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On Behalf Of:

The Oregon Caneberry Commission
The Washington Red Raspberry Commission
The Cling Peach Advisory Board
The Pacific Coast Canned Pear Service, Inc.

October 30, 1985 Re: H.R. 3328

Good morning, Mr. Chairman. My name is Joe Dorn and I am a member of the law firm of Kilpatrick & Cody. I appear today on behalf of the Oregon Caneberry and Washington Red Raspberry Commissions, whose raspberry growers I recently represented in an antidumping case against bulk packed red raspberries from Canada and whom I am now representing in a countervailing duty case against Canada. I am also here on behalf of the Cling Peach Advisory Board and the Pacific Coast Canned Pear Service, Inc., whose canning peach and canning pear growers have become increasingly concerned about imports of canned peaches and canned pears.

Products of Concern

Raspberries produced for processing are only commercially grown in Washington and Oregon. In those two states, over 90 percent of the entire raspberry crop is packed and virtually all berries of manufacturing grade are packed in bulk containers. Bulk packed raspberries are then sold to processors of jams, jellies, yoghurt, etc. The packer--who may also be the grower--runs the berries across a belt where they are washed, sorted, and then dropped into 28 pound pails or 400 pound metal drums. No syrup, juice, or water is added.

Clingstone peaches, which are only grown in California, account for over 90 percent of U.S. production of

canned peaches. About 70-75 percent of the Clingstone peach crop goes into canned peaches, and about 20-25 percent into canned fruit mixtures. The canneries pit, skin and slice the peaches, sort them into cans of various sizes, add either a syrup, natural juice, or water, and seal and heat treat the cans.

Bartlett pears, grown in Washington, Oregon, and California, are virtually the only pear variety used for canning. About 75 percent of the Bartlett pear crop goes into canning, with the remainder sold in the fresh market. About three-fourths of the Bartlett pears delivered to canneries go into canned pears, with about one-fifth to one-quarter going into canned fruit mixtures. The cannery skins and cores the pears, sorts them into cans of various sizes, adds syrup, natural juice, or water, and seals and heat treats the cans.

Definition Of Domestic Industry Under Existing Law

As a threshold matter, in every antidumping or countervailing duty case before it, the U.S. International Trade Commission ("ITC") must define the scope of the domestic industry to be examined in the investigation. The Commission then determines whether that industry is materially injured or threatened with material injury by reason of imports which the Department of Commerce has determined are either subsidized or dumped. The injury

determination often depends on how the domestic industry is defined--both in agricultural and industrial product cases.

The domestic industry is statutorily defined as "the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product."[1] "Like product," in turn, is defined as a "product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation . . . ."[2]

In agricultural product cases, the ITC has generally addressed two factors in deciding whether growers are within the industry producing a processed product--first, the extent to which "the agricultural product enters a single, continuous line of production resulting in one end product," and second, the extent to which there is a "commonality of economic interest between the growers and processors, either in the form of interlocking ownership or economic integration in the sense of shared revenues."[3]

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1 19 U.S.C. § 1677(4)(A).

2 19 U.S.C. § 1677(10).

3 Certain Table Wines From France and Italy, Inv. Nos. 701-TA-210 and 211 (Preliminary).

The basis for the "single, continuous line of production" factor is the Commission's concern that it would skew the data to include growers where their raw product goes into products other than the processed product at issue. For example, grape growers were excluded from the industry producing wine because 45 percent of grapes by volume are sold in the table grape and raisin markets and over half of grower revenues are derived from table grapes and raisins. Grape growers might be suffering due to depressed prices for table grapes and raisins rather than dumped wine imports.

The basis for the "commonality of economic interest" factor is the Commission's concern that growers only be included if they are similarly injured by the imports and can benefit as much as the processors from import relief. The Commission does not want to find injury based on the growers' situation and then award relief that will only benefit the processors.

The application of these factors resulted in the inclusion of growers in the industry producing red raspberries packed in bulk and the exclusion of growers from the industries producing canned peaches with sugar, canned pears with sugar, and canned fruit mixtures with sugar, as I explain below.

Certain Red Raspberries From Canada

In Certain Red Raspberries From Canada,[4] the ITC agreed with petitioners in defining the like product as red raspberries packed in bulk containers, excluding all other types of berries, fresh-market red raspberries, and retail/institutional packed berries. The Commission also agreed with petitioners in defining the domestic industry to include both growers and packers of red raspberries packed in bulk. The Commission found that 100 percent of manufacturing grade berries move into a continuous line of production from the growers to the packers. The Commission further found a substantial degree of interlocking ownership, with 35 percent of the crop grown by self-packers, and also found that depressed prices for bulk-packed berries hurt growers as well as packers.

Notwithstanding that determination, Vice-Chairman Liebeler, in a pending countervailing duty case against red raspberries from Canada, has asked the parties to fully brief the grower/packer issue, noting that "the two-part test currently followed by the Commission is open to serious legal and economic criticism."[5] Moreover, the ITC's General Counsel opined in a memorandum to the Commission[6] that the

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4 Inv. No. 731-TA-196 (Final).

5 Certain Red Raspberries From Canada, Inv. No. 701-TA-254 (Preliminary).

6 GC-I-104 (June 6, 1985).

statutory definition of the like product would, if followed strictly, exclude the growers of red raspberries from the industry.

Sugar Content Of Certain Articles From Australia

In Sugar Content Of Certain Articles From Australia,[7] the imported articles under investigation were canned Bartlett pears, canned clingstone peaches, and canned fruit mixtures, all containing sugar. The Commission defined three separate like products: (1) U.S. canned Bartlett pears containing sugar, (2) U.S. canned clingstone peaches containing sugar, and (3) U.S. canned fruit mixtures containing sugar. The Commission then determined not to include growers within the industries producing these three products. In doing so, the Commission heeded the advice of its General Counsel to "be extremely careful when expanding the definition of industry in an agricultural product case . . . ." According to the General Counsel, there is nothing in the statute or its legislative history that necessarily permits the inclusion of growers, because the statutory rule is that the industry must be defined strictly in terms of producers of the like product.[8]

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7 Inv. No. 104-TAA-26.

8 GC-I-177 (August 28, 1985).

57-889 O—86——3

Another Interpretation Of The Statute

I disagree with the General Counsel's interpretation of the statute. As I read the statute, "the domestic producers as a whole of a like product" may include growers as well as processors of a processed agricultural product. For example, the red raspberry grower is primarily in the business of producing red raspberries packed in bulk containers. In my view, he is more the producer of that like product than the packer, who merely washes the berries, places them in a container, and sends them to cold storage to await delivery to a jam manufacturer. The red raspberry grower devotes three years to getting his plants into full production and he "produces" bulk pack raspberries on a year around basis. The packer produces everything from fish to vegetables and only packs raspberries six to eight weeks a year.

Likewise, the clingstone peach grower is primarily in the business of producing canned peaches. He takes four years to get a tree to full production and his livelihood from peaches depends on the production and sale of canned peaches and, to a much lesser extent, on the production and sale of canned fruit mixtures.

Likewise, the Bartlett pear grower is primarily in the business of producing canned pears. He takes eight years to get a tree to full production. About 75 percent of

the Bartlett pear crop goes to canneries, of which three-quarters go to canned pears and the remainder to fruit mixtures. If dumped or subsidized products depress the price of canned pears, the Bartlett pear grower suffers the consequences.

The Commission's concerns that including growers may skew the domestic industry data or result in relief that only benefits the processors are insufficient grounds for excluding growers in most cases. Including growers within the industry does not require the Commission to give the same weight to their economic condition as it gives to the processors. In an industry where all or substantially all of the growers' output goes into the processed product and where the raw product constitutes most of the value of the processed product--e.g., red raspberries packed in bulk containers--the growers' condition should be given greater weight than that of the processors. On the other hand, in an industry where only a bare majority of the growers' output goes into the processed product and where the raw product constitutes only a small portion of the value of the processed product--e.g., table wine--more weight should be accorded to the economic condition of the processors than to the condition of the growers. In other cases--such as canned pears and canned peaches--where a substantial majority of the raw product goes into the processed product

and where the raw product constitutes a substantial portion of the value of the processed product, equal weight might be given to the condition of growers and processors.

The point is that while the weight given to the growing versus the processing side of the industry may vary from case to case, the growers should not be totally excluded from consideration except where it is clear that their condition is so unrelated to that of the processors and the imported product at issue that it would serve no evidentiary purpose to consider their condition.

Clarifying Legislation Is Needed

The ITC has gotten itself into a legal box by creating and perpetuating a rigid two-pronged test to decide whether growers are within the industries producing processed agricultural products. The Commission and its General Counsel appear frustrated with the application of that test. They are searching for a better approach. Congress should enact clarifying legislation to give the ITC direction.

To begin with, Congress should explicitly endorse the Commission's past decisions which have included growers within domestic industries, such as the decisions involving red raspberries packed in bulk containers, lamb meat, frozen concentrated orange juice, and fresh Atlantic ground fish.

In addition, the Congress should specify criteria for future determinations that comport with common sense and economic reality. I would propose the following:

1. Primary purpose for growing the raw agricultural product

If the primary purpose of growing the raw agricultural product is for the production of the processed agricultural product at issue, the grower should be included in the domestic industry. For example, not necessary grapes produce primarily for table grape production, and oilseeds peach and berries grow primarily for canned peach and canned pear production.

If most grower revenues from the raw product are derived from the utilization in the processed product at issue, the grower clearly have a stake in the outcome of the investigation of the processed product and have "standing" in a legal sense. The growers' economic condition is also relevant to whether the domestic industry is injured. The greater the growers' dependence on the processed product at issue, the more weight their economic condition should have in determining whether the industry as a whole has been injured.

2. Common economic interests

Alternatively, if the growers of the raw agricultural product have substantially common economic interests with the processors of the processed product at issue, the

growers should be included within the domestic industry. Indicia of common economic interest should include the extent to which prices received by growers are dependent upon prices received by processors, whether growers and processors are co-petitioners in the investigation or otherwise jointly support the petition, and whether growers and processors would each benefit from the imposition of anti-dumping or countervailing duties.

H.R. 3329

My clients support H.R. 3329 as a much needed improvement over existing law. The Bill properly rejects the ITC's practice of requiring both a single, continuous line of production and a commonality of economic interests. The satisfaction of either criterion should be sufficient.

The Bill also rejects the ITC's practice, in applying the commonality of economic interest test, of requiring significant legal relationships between growers and processors. As noted by Vice-Chairman Liebeler, such a requirement "makes little economic sense."[9]

On the other hand, we would propose that the legislation be aimed at the definition of "domestic industry" rather than the definition of "like product," as

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9 Live Swine And Pork From Canada, at 21, Inv. Nos. 701-TA-214 (Final).

as to better comport with the existing statutory scheme. We would further propose that "the single continuous line of production" provision might be changed to a less rigid test focussing on whether the raw product is primarily produced for the production of the processed product at issue. In particular, we would object to the requirement that "the raw product [be] substantially or completely devoted to the production of the more advanced product" and that "the more advanced product [be] substantially or completely from the raw product."

Conclusion

On behalf of red raspberry, clingstone peach, and Bartlett pear growers, I thank the Chairman and his subcommittee for considering H.R. 3328. The fact is that without these growers there would be no U.S. industries producing red raspberries packed in bulk containers, canned peaches, and canned pears. They deserve protection from dumping and subsidies as much as the processors who form the other half of the industries producing these products.

Mr. BEDELL. Thank you very much, Mr. Dorn.

Mr. Coelho.

Mr. COELHO. Mr. Dorn, I just want to make sure that for our records that we don't get into a jurisdictional dispute. We are not considering legislation today. That is a subject for the Committee on Ways and Means and not for the Agriculture Committee. We are considering a subject matter which we obviously have jurisdiction over, but that particular legislation, the way it is drafted, does not get referred to our committee. That is something for another committee to pursue. So, that is just for the record to get that straight.

Let me ask you, in your statement, you said that the general counsel for the ITC has in effect instructed the Commissioners that they may be going too far. Is that in writing somewhere?

Mr. DORN. Yes; it is in a memorandum to the Commissioners in a couple of——

Mr. COELHO. Do you have a copy of that?

Mr. DORN. They are referred to in my prepared statement and I have copies in my office which I would be glad to submit to the committee.

Mr. COELHO. Can you supply it to the committee for the record? If there is no objection, we would like to have it for the record.

Mr. DORN. I would be glad to do so.

[The material is held in the committee files.]

Mr. COELHO. Based on that, I think that I know that I will and I am sure that other members will want to question the general counsel in writing and the chairman also.

I was intrigued, and you might be aware of this, that in a press release dated October 24, the Trade Commission Chairman, Dr. Stern, says that we should get away from the fixation on imports as the problem and trade relief as the solution. She goes on further to say we have written trade laws, not competitive legislation. Existing remedies are not always effective. She goes on to say, characterizing unfair trade practices as secondary problems, and so on.

Her attitude, it seems to me, is one of saying that we should just get away from considering these complaints. I assume that is what her job is over there, but she is in effect saying that she is not interested in that. I also understand she is leaving in January, so maybe it is appropriate for her to say that at this point.

However, would you like to comment about that?

Mr. DORN. I am sure that being the Chairwoman of that Commission is somewhat frustrating, given the large number of cases that are being filed today. They have a tremendous increase in caseload. Frankly, it is very difficult, I think, given that caseload, for each case to receive the serious and detailed consideration that it should at the Commissioner level.

Mr. COELHO. I would just say, if there is no objection, that I would like to insert this press release in the record at this time because we make reference to it.

[Press release follows:]

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

HOLD FOR RELEASE
1:00 P.M., EDT, Oct. 24, 1985

Contact: Hal Sundstrom
(202) 523- 0235

USITC 85 103

TRADE COMMISSION CHAIRWOMAN STERN URGES REVITALIZATION STRATEGY AS RELIEF FOR TRADE DEFICITS

Washington, D.C., October 24, 1985 -- To revitalize America as a trading nation, the head of the U.S. International Trade Commission, said here today, "we should get away from the fixation on imports as the problem and on trade relief as the solution."

"Our chief concern," Dr. Paula Stern told a National Press Club luncheon audience, "need not be the level of the playing field. We must concentrate instead on building the strength of the American team."

Noting that "we have written trade laws, not competitiveness legislation," the USITC chairwoman, said that existing remedies were "not always effective." And, she added, "the approach that focuses narrowly on imports often overlooks the more basic causes for competitive decline."

"We could -- and should -- change this pattern by changing our definition of government's role in boosting American trade performance. Intervention must serve strategic goals, not simply respond to temporary distress or political clout... We should use a more appropriate test to trigger assistance -- an assessment of an industry's ability to compete..."

"When the ITC now recommends relief, we give the President only a take-it-or-leave-it option. We should offer a broad and deep range of choices based on an industry's competitive position and its readiness to adapt to new conditions.

Characterizing unfair trade practices as secondary problems, Dr. Stern emphasized the role of the "super dollar" as "a prime cause of our trading weakness." While welcoming Administration efforts to push the dollar's value down, she also noted that the "buy-now, pay-later practices which drove [it] up are still at work."

The full text of Dr. Stern's address is attached.

HOLD FOR DELIVERY
1:00 P.M., October 24, 1985

THE U.S. TRADE DEFICIT: HOW DO YOU SPELL RELIEF

Remarks of Dr. Paula Stern
Chairwoman, U.S. International Trade Commission
National Press Club Washington, D.C.
Oct. 24, 1985

At the White House and on Capitol Hill trade is now a front-burner topic. As the heat has risen, Americans have looked abroad for scapegoats as much as markets. At home, the clamor for protectionism has become almost deafening.

I would like to try today to define the nature of the crisis we face and to propose a different way out. I believe that Americans can compete successfully in international trade if we work more as a team and if our leaders work together to formulate and carry out a winning competitive strategy.

Instead of aiming at static goals -- protecting jobs and markets -- we must respond to the causes, not the symptoms of change.

To insure that new public investments to assist industries earn lasting returns, we must insist on new criteria for them. Aid to distressed industries must follow a comprehensive analysis of the competitive challenge. And government must condition its actions on the cooperative efforts of all who gain from its help, all who can contribute to the viability of an industry in the new international environment.

Crisis is another word for opportunity. And we have a genuine opportunity now to set a course for growth ... growth in U.S. prosperity and growth in the global market where our strength is being tested as never before. The way to spell relief from trade deficits is to write competitiveness and growth at the top of our list of national economic priorities.

The biggest problem in international commerce is that there is not enough of it. And the biggest problem for the United States as a trading nation is that we have priced ourselves out of the increasingly intense competition.

Those are certainly not the the only troublesome aspects of world trade or of America's position in it. But they are basic realities, the points of entry for any sensible discussion of our trade deficit and of ways to redress it.

The fairly steady post-war expansion in the volume of global merchandise trade came nearly to a halt between 1980 and 1983. Growth resumed last year, but much of the rise was due to the record-setting purchases of foreign goods Americans borrowed to buy.

The most powerful force in determining our competitive performance in recent years has been the increase in the value of the dollar against other world trading currencies. The super dollar remains our super headache. We brought it on ourselves and, by doing so, gave our trading partners and rivals a competitive advantage at America's expense.

The ITC, after studying the agricultural sector, concluded a few months ago that up to 88 percent of the drop in U.S. farm exports between 1981 and 1982 was due to the rise in the dollar's value. And Federal Reserve Board experts blame the high dollar for 87 percent of the increase in our total trade deficit between 1980 and 1984.

The dollar has done great damage to America's trading position. Fortunately, the Administration has stopped touting the strong dollar and has begun to treat it as a prime cause of our trading weakness.

Only a month has passed since that change of emphasis brought new policies into effect. But even though the dollar is still only 3-4 percent below its 1984 level, I am encouraged by the shift and by the parallel efforts to generate new growth in both the industrialized and debtor nations.

But even with a significant, continuing drop in the dollar, we will not recoup the lost jobs at home and sales abroad easily or painlessly. A steady decline in the dollar's value will eventually bring exports up and imports down.

It will be hard work to recapture customer loyalties here and abroad from new, determined and diverse rivals. And as a weaker dollar reduces competition from cheaper imports in our own market, inflationary pressures are bound to gain steam.

This forecast assumes, moreover, that the Administration's altered policies succeed. But we must recognize that the buy-now, pay-later practices which drove the dollar up are still at work.

If we continue living on the installment plan, the dollar's value will continue to reflect our choice. The international currency exchanges measure our deeds, not just our words. Until the two are more nearly in harmony, we will not be able to talk or trade the dollar down fast enough or far enough to relieve our heaviest trade handicap.

It will take a special effort by both the Administration and the Congress to correct course. But when and if U.S. macroeconomic policy moves in a steadier, more sensible direction, we will still need to tackle our structural weaknesses.

In the process, we should not waste time and political energy on secondary problems. The law-breakers in the global marketplace are numerous and imaginative. But the unfair trade practices of other nations, however vexing to individual U.S. industries, are not the chief menace to the trading system or to America.

On this point, I speak with feeling and with the experience that comes from casting some one thousand votes on import relief cases of all sizes and shapes -- fair and unfair.

The International Trade Commission is the cop on the import beat. And the alarm bells rung by American producers who claim that they are being victimized by competitors dumping goods, subsidizing sales, pirating discoveries or violating trademarks make my office seem something like the Hill Street station during a gang war.

I can understand the instinct to "go out and do it to them before they do it to" us. But I cannot justify our following that primal urge in international trade.

In the 1985 fiscal year that just ended, the ITC initiated 22 percent more investigations than in 1984. But let's face reality.

Between 1982 and 1984 we levied countervailing or anti-dumping duties on barely $3 billion of U.S. imports. To be sure, this figure understates the problem. And there are other abuses which we still cannot measure in precise dollar terms -- a vast array of stratagems which work to bar our products and services from foreign markets.

These non-tariff barriers -- whether they are the picayune technical inspections or the chauvinistic government purchasing rules followed by Japan, among others -- are the nemesis of the open trading regime that is essential for growth. We must fight to remove those obstacles and fight hard.

But, to explain the $140-billion trade deficit facing us this year, we have to look beyond the ways in which foreigners close their markets and abuse the open hospitality of ours.

Our chief concern need not be the level of the playing field. We must concentrate instead on building the strength of the American team.

Historically, however, we have written trade laws, not competitiveness legislation. As we have worked to liberalize international commerce, we have also created exemptions or shelters for declining or particularly powerful domestic industries. As a result, general protection against imports -- whether or not they are unfairly traded -- has soared from eight percent coverage in 1975 to 21 percent in 1984.

Many laws offer U.S. claimants relief from the strain of trade competition. But the approach that focuses narrowly on imports often overlooks more basic causes of competitive decline.

And in cases where trade is a primary cause of difficulty, available remedies are not always effective. Tariffs, for instance, have not worked in an environment where an increase in the dollar's value swamps the effect of the added duty.

Nor have we made good on promises to workers dislocated by import competition. The Trade Adjustment Assistance Act is due to expire in mid-November, and the aid it has supplied often failed to identify new jobs or provide new, marketable skills.

No wonder workers regarded it as little more than "burial benefits" for the unemployed.

In "escape clause" cases where the ITC finds that imports threaten or actually cause serious injury to American industries, we are supposed to be able to recommend tariffs, adjustment assistance and/or quotas as relief. But there is now really only one item on our remedy list: quota restrictions on imports.

And when the President, on our recommendation or on his own initiative, selects such a course, that action alone accomplishes precious little to make the intended beneficiaries more competitive.

Consider for example, the Administration's five-year program to limit steel imports. If it reaches its current goal, the cost to U.S. consumers would be three quarters of a billion dollars in the first year of operation. And it may even harm us as exporters. The ITC is now examining how such restrictions would raise the cost of our manufactured exports and thus reduce our competitiveness.

The point is that trade relief is never cost-free. It puts burdens on other industries -- steel users, for instance -- and on their customers, U.S. consumers. At the same time, relief by itself is rarely the answer to competitiveness problems. In its present form it does not provide strong incentives for recipient industries to adjust to competition.

Unlike the Chrysler loan guarantees, there are no established performance tests setting conditions for granting or extending trade relief.

We could -- and should -- change this pattern by changing our definition of government's role in boosting American trade performance. Intervention must serve strategic goals, not simply respond to temporary distress or political clout.

We should get away from a fixation on imports as the problem and on trade relief as the solution. We should use a more appropriate test to trigger assistance -- an assessment of an industry's ability to compete.

Measuring the impact of imports alone neither tells us what the problem is nor directs us toward comprehensive solutions.. And import relief is not now tied to private efforts to meet the challenge of international competition.

When the ITC now recommends relief, we give the President only a take-it-or-leave it option. We should offer a broad and deep range of choices based on an industry's competitive position and its readiness to adapt to new conditions.

I do not propose a vast, new government agency to oversee this work. The ITC already has the impartial expertise to assess the strengths and weaknesses, the prospects and problems of the industries which petition us for help.

We already see many situations where imports are only the symptom, not the chief cause, of a competitive problem. But our mandate does not enable us to support remedies to deal with problems inside an industry, only with threats that originate abroad.

We could be more useful if we could match the breadth of our recommendations to the depth of our investigations. Our analysis could serve in the future, as it has not in the past, to help government and business cooperate in setting common goals and a course toward them.

I would not, however, change the role of private initiative in triggering a government response. The first move toward cooperation should come, as now, as a form of petition -- but for revitalization, not just relief.

For effective teamwork, we do not want Federal officials as the starters, the quarterbacks and the referees of every play. The government, like the industry it purports to aid, however, must have a competitive game plan and an eye to the returns on its investment.

For example, in exchange for trade or regulatory relief, for tax breaks or anti-trust law exemptions, industries should spell out their planned investments in modernizing production methods and equipment. Or in return for funding research and development or for long-term government procurement contracts, we might expect undertakings to plan-or use technologies.

The CEC, in fact, proposed auctioning quota rights as part of the relief it recommended last July for the footwear industry. The idea died, however, when the President rejected that entire package, and the question of how to administer such an auctioning system remains an open one.

More recently, two noted economists have estimated that an auction of quota rights in 16 fields where import levels are already assigned free of charge might net over $4 billion from foreign middlemen in 1988.

That sum would represent significant seed money to plow back into hiking our competitive edge. It could be a very successful carrot to induce management and labor along with suppliers, creditors, shareholders and state and local governments to participate in workable revitalization plans.

Some will say that this sounds like more government intervention. But this proposal only recognizes the unfortunate reality of government intervention which is already taking place already.

All government decisions -- whether on taxation or investment, regulation or education, guns or butter -- play a part in hurting or bolstering our competitive posture. Import relief is no different.

But starting with the macroeconomic policies which I discussed earlier, we must make all our choices with full attention to their impact on our competitiveness.

Relief will come when the Federal government assigns trade that central, national priority and recognizes that it needs to act whether trade is the cause or the symptom of a loss of competitiveness. Relief will come through teamwork that makes us winners together in international competition.

We must meet that competition or succumb to it. The strains of the global market put our character and our common sense to a severe test. But I believe we can cooperate in new ways, with new vigor to answer that challenge and to emerge stronger from the fight.

Thank you.

Mr. COELHO. But you are saying, in effect, that the overload of the Commission may be causing them some of this difficulty. But we are overloaded all the time over here, too. We could say, look, we don't want to consider legislation. That would be one heck of a statement for us to make. We might get defeated next time around, but that doesn't justify her comments.

What she could say is that we need help, we need X, we need Y, as opposed to saying we shouldn't be considering this. Don't you think so?

Mr. DORN. I certainly do. Of course, it is not the role of the Commission to set trade policy. It is the role of the Commission to decide trade cases under the current statutory framework.

Mr. COELHO. But if she is going to comment on trade policy, she could also comment another way. Once she crosses the line and she is not making a decision, she is make a comment on trade policy, she could also make other comments.

Mr. DORN. I would hope she would make the comment that she is committed to enforce existing law and where——

Mr. COELHO. Yes, let me ask you another question. You said that the general counsel in effect said that you are moving too far out when you pursue these grower complaints. Was there any distinction in regard to grapes, because that is the law of the land? Did this general counsel make any distinction in regard to that, or did she just ignore that?

Mr. DORN. Well, she used that as an example of a correct decision where the grape growers were excluded and suggested that the Commission should be very careful in——

Mr. COELHO. Wait a minute. I want to make sure. The grape growers are excluded? The grape growers are not excluded. We included them by law. They ruled against the grape growers. Are you saying that she said that the grape growers do not have a complaint and that was proper or——

Mr. DORN. I am sorry. I am referring to a previous decision involving the grape growers before the legislation.

Mr. COELHO. OK. The one before that we changed the law.

Mr. DORN. That set up a special situation.

Mr. COELHO. OK.

Mr. DORN. The old grape case is referred to frequently because it is the first case where the Commission articulated the two-step test.

Mr. COELHO. That is right.

Mr. Wray, do you have any comments to make on this grape situation?

Mr. WRAY. Mr. Coelho, I agree with your observations and those of Mr. Dorn. I am somewhat surprised to see that statement by Mrs. Stern. She is in fact the Chairwoman of the Commission whose sole purpose is to decide the availability of trade remedies for the U.S. industry. It is a bit like the Chairman of the SEC talking to the security analyst and saying we don't really have a problem with securities fraud; we have a problem with our deficit. Let's do something about that.

I would like to see, not only in Dr. Stern's statements but in the performance of the Trade Commission, a more rigorous attention to

the laws as drafted by the Congress in response to the petitions that are filed by needy and hurting American industries.

The impression I have gotten, not just in agricultural cases but overall, is that the ITC has seen its role in a far more rigorous and legalistic way than the GATT statute or the laws of the United States require. I have suggested in my prepared statement that it may be instructive to the Commission and to the Congress to have a survey by the U.S. Trade Representative's office or some other responsible body to see exactly how our trading partners are interpreting this injury determination, not in terms of their national laws but in terms of their performance.

I suspect that such a survey would indicate that the United States is singular in its legalistic approach to the denial of import relief. The GATT statute and the obligations that are assumed under the GATT and under the laws that implement the GATT by this Congress are designed to provide parity in treatment for our international trading partners, and I am not sure that has happened in this case.

Mr. COELHO. Are you saying, if I can interpret it, that the United States is the only one that is following the law to the extreme letter of it and that everybody else is aggressively trying to do what is in their best interests? Is that what you are saying?

Mr. WRAY. It may turn out to be such a black and white case. I don't have enough information on what is happening in the rest of the world, although I do have some information which would indicate that the approach by the International Trade Commission to these cases is excessively strict in the denial of relief to domestic industries, at least in comparison to the practices of our other trading partners.

What I do believe is that it would be very instructive to this Congress and to the Commission to have an informed study of those practices.

Mr. COELHO. That is interesting.

What I would like to do is to come back with some questions after everybody else has had a chance, so I will yield.

Mr. OLIN. Mr. Chairman.

Mr. BEDELL. Mr. Olin.

Mr. OLIN. I would like to question Mr. Wray a little bit more along the same lines as Mr. Coelho has started.

It has been my observation that our people are taking care of our trade equity basically, either the special trade representative or the ITC's ruling on various instances, really are sort of pussyfooting around. I don't know whether the problem is being overly legalistic or whether the problem is a problem of attitude, feeling that our industries ought to fend for themselves, or whether it is a problem that they have been squeezed and can't handle the workload, or what it is.

Could you comment a little bit more on that? You have mentioned at the end of your paper here that something clearly needs to be done to encourage and assist the ITC to more effectively and coherently administer the letter of the law and the intent of Congress. Could you get a little deeper into that?

Why do you think they don't take the bit in their teeth and get at the problem of determining whether there are unfair trade practices in these agricultural products or whether there isn't?

Mr. WRAY. Mr. Olin, as you had indicated and undoubtedly have experienced, as have your colleagues, how sensitive trade issues are, both in the domestic and in the international sphere. Nonetheless, they are sensitive because they are important.

We have a set of laws that provide for remedies. They are not protectionist laws. They are laws designed to countervail, to offset, and no more than offset, the unfair practices of some of our trading partners. This is not protectionist action.

When we go to the ITC, we are not asking for protection. We are not asking for quotas. We don't come to the Hill and ask for political weapons.

Mr. OLIN. You are asking for a finding of fact, I take it.

Mr. WRAY. We are asking to have unfair trading practices remedied, and that is not protectionist.

The problems that I think the ITC has, and these are of course my personal observations, are threefold. One is I think that they have a great deal of activity over the last several years. I think they have scarce resources. Most importantly I think is not the scarcity of those resources but the use to which they are placed.

The ITC, I believe, has misused its resources in several ways, one of which is—there is a bifurcated process in the ITC the first of which requires a preliminary determination essentially, according to the intentions of Congress, to see if the case has any merit whatsoever, and that is all. If it does have merit, it is to proceed to a full investigation.

What the ITC has done, for reasons that I am not clear about, is made the preliminary determination in effect a minifinal determination and then again made a final determination 4 months later. Instead of using their resources simply to determine whether a petition has merit, worth of investigation, they have a massive outpouring under a very tight time schedule of staff work.

I think if they used their resources more in line with the intention of the Congress and, I believe, the letter of the law, we would have much more resources available to fully understand the complexities of agricultural economics as well as other industries for whom they are responsible for administering import relief.

So, I think in that respect, they are importantly misusing a major portion of the resources available to them.

Second, my personal observation is that the Commissioners, when voting on a case, frequently ignore their own staff report. The staff report is an enormous undertaking. They have both a preliminary and a final level.

In the particular case which I discussed this morning, the lamb case, the staff informed the Commissioners that the lamb herd was being liquidated because of low prices and that the prices of the competing New Zealand product were depressing American prices. In the final decision, the Commission majority ruled there is no evidence that herds are being liquidated and there is no discernible relationship between New Zealand lamb prices and American lamb prices.

Mr. OLIN. Excuse me for interrupting, but what do you see as the remedy? These Commissioners are appointed for 9 years, I think, and they are going to be around a long time. If they are not up to doing the work, what do we do about it?

Mr. WRAY. I think the Commissioners fully intend to perform their jobs to the best of their ability. I think occasionally reminders from the Congress about what their job is and how important it is would be useful. I think constructive suggestions from the Congress at hearings before the Ways and Means Committee, possibly informal meetings with this committee, would be helpful.

There is a tradition, there is a pattern, that——

Mr. OLIN. You are really saying that they don't really understand how to do their jobs. It isn't a question of attitude; it is a question of know-how, I think.

Mr. WRAY. Well, Mr. Olin, I would have to agree with you in part. But they know how to do their jobs. But I think that they have gotten into a position where they are misusing their resources, both in misconstruing their mission at a preliminary stage and not paying enough attention to their own staff.

Mr. COELHO. Would the gentleman yield?

Mr. OLIN. I certainly will.

Mr. COELHO. As I understand it, you suggested earlier that we have a meeting with ITC to which I agree.

Mr. OLIN. Have a meeting with the full Commission. It is five members, I believe.

Mr. COELHO. To which I agree. I think that something else which needs to be done, based on Mr. Wray's comments, is that we should consider—and I am prepared as an individual to do it, but maybe others of this committee would like to do it—is to ask the GAO to look into the use of the funds and whether or not they are properly being used. If it is following the intent of the Congress.

We have to do a little staff work to back up some of the comments that you made, but I think that the more aggressive we become on that—this is not a jurisdictional question; we as Members of Congress have a right to get into this—that we should stay after them and put the pressure on them and make them justify what they are doing. I think that is the only way you are going to make appointed Commissioners understand that we are serious.

So, I would strongly suggest that, and I am hoping that we could get that done.

Mr. OLIN. I thank the gentleman from California for his comments on this.

Could I ask you this, Mr. Wray, not to continue this forever, but you have mentioned the subject of the U.S. Trade Representative. One of your suggestions was that an inquiry be undertaken by the Trade Representative for the appropriate agencies. Could you expand a little bit on that? What did you think relative to this subject that the Trade Representative can contribute?

Mr. WRAY. Sir, the U.S. Trade Representative is responsible for coordination of our GATT obligations together with those of our trading partners. I believe that as a matter of course each of the GATT members inform each other of actions under the dumping or countervailing duty laws.

I think a statistical survey, if nothing more, that would indicate the number of cases filed, the number of cases in which affirmative relief is provided, may give some indication of the relative seriousness with which other countries question the injury requirement. I have the impression that in most countries, the injury requirement is more or less a pro forma matter.

Mr. OLIN. Do you find that in the case of the New Zealand sheep that you were looking into that the Trade Representative was responsive enough to the need for information?

Mr. WRAY. Sir, in the lamb case, once a petition is brought before the Department of Commerce and the International Trade Commission, there is no role for the Special Trade Representative to play.

If I may return, Mr. Olin, to your original question, my observation of some of the problems and some of the areas that the ITC could constructively improve on, first of all, as I mentioned, is what I believe is somewhat of a misuse of resources.

Second, I think there is very little understanding of agricultural economics. Agricultural economics are different from industrial economics. We have suppliers of perishable products who are not suppliers with options that steel producers have. Traditionally, the producers of agricultural products have major investments. It takes a year and a half to make a lamb—I don't know how long it takes to make a hog—and then it has to be sold immediately when it is ready.

That is a different kind of a price dynamic than you find when you are selling steel or chemicals. It takes a little bit of an opened mind, a little bit of attention to understand this. And I find, as do other lawyers who represent agricultural interests and, more importantly, our clients that there is none of that available at the Commission. I think members of the Commission, at least at the staff level, recognize that is a deficiency.

Something needs to be done, and some initiative needs to be pointed out to the Commission, because they are just not doing the job.

Third, I think there is a tendency, from time to time, to interject policy proclivities of various commissioners and to indulge in excessive legalistic thinking. As a lawyer, I think legalistic thinking has a real role to play, but we are talking about a marketplace and people's livelihoods. In order to responsively make decisions on that, you have to understand that, not simply from a legal standpoint. You have to understand the realities of the marketplace and of the producers. I think that understanding is not present often, particularly in agricultural cases at the Commission.

The policy proclivities have no proper place for commissioners. They are there to enforce the law, not to discuss what trade policy ought to be, not to discuss other issues, but simply to enforce the law. I think they need to be reminded of that from time-to-time.

So, in those three areas, Mr. Olin, I think the Commission could be improved.

Mr. OLIN. Thank you very much, Mr. Wray.

Thank you, Mr. Chairman.

Mr. BEDELL. Mr. Penny.

Mr. PENNY. Thank you, Mr. Chairman.

I think we can all agree that the role of the Commission is to identify and document unfair trade practices where they may exist and to respond to those within the authority that exists in the General Agreement on Trades and Tariffs and the statutes that carry out that agreement. I want to follow up on the last point you just made, because it seems, at least in recent years, that more often than not the Commission sometimes in apparent contradiction of the facts tries to find ways to draw distinctions that result in either a watered down ruling or a ruling that finds no harm.

One example of that exists with agricultural products. Another occurs when we find them agonizing over some legalistic interpretation that allows them to get out from under the requirement to do something.

Is my observation correct? I can't claim that I sit here and watch every ruling they make, but it seems that the rulings they have made that have affected industries in my region certainly fall far short of the mark even though I think we have them on the merits of the case.

Mr. WRAY. Mr. Penny, I read most of the decisions that the International Trade Commission issues, although I don't confess to an absolute photographic memory of all that they have decided, but I share the same impressions that you have.

When I look at the lamb case in which I was counsel for the lamb industry, I was just baffled and perplexed. Clearly, we presented a case. There is no one in the industry who doesn't think New Zealand is hurting the sheep industry. Yet, four Commissioners, two of whom were brand new, summarily told us they are not hurting you when we know that they are. It is incredible. Two of the Commissioners who do have background in agricultural commodities did agree with us.

When I look at the pork case—I talked to Mark Sandstrom and said, it is not funny, but it is incredible—it is so lacking in common sense. Yes, there is a certain logic to it, but it is untied to reality.

There is an incoherence, at least in my judgment, in the administration of these laws that is almost impossible to explain. Yes, it is very troubling.

I do want to emphasize, because I know how important it is to have an open- and free-trade, that when we are talking about the ITC, we are talking about an unfair trading practice which has already been established or will be established by the Department of Commerce. The only question is, can they engage in unfair trade because they aren't hurting us? The fact that they are engaging in unfair and, in some cases, illegal trading practices has already been established by the time it comes to the Commission for a final determination.

Why do we bend over backward to find a way for a practice of commodity that is being clearly unfairly traded under our international trade rules not to have an offsetting duty? It troubles me.

Mr. COELHO. Would the gentleman yield?

Mr. PENNY. I will yield.

Mr. COELHO. Let me just, in line with your questioning, Mr. Wray represented in this lamb case the American Lamb Co. from Chico. When we talk about injury and what happens, would you tell us their financial situation today, Mr. Wray?

Mr. WRAY. A year and a half ago when the Commission found negatively by a vote of 4 to 2, we had to appeal the case. We needed a remedy. The appeal was timely. The New Zealand imports have doubled since then. The American Lamb Co. ceased business on September 30 of this year. They ran out of money. They are a major meat packer, the only meat packer in southern California. They are now out of business.

Mr. COELHO. But why are they out of business? Just following Mr. Penny's line of thought, I think that is the key here.

Mr. WRAY. They are out of business for two reasons. One is the continued and increasing pressure of New Zealand imports on the product that they process and produce.

The second is the enormous cost in delay involved in requiring the ITC to do something that they should have done in the first place.

Mr. PENNY. I appreciate your comments. It is clear that the role of the Commission is to respond to unfair trade practices in a way that hopefully eliminates those practices so that we have a fair trade situation but in the meantime gives us some type of a countervailing response that equalizes the situation. I share your frustration with so many recent rulings from the Commission that seem to find an excuse. It seems as if many of their decisions are an exercise designed primarily to find an excuse not to do something or to recommend an inadequate response rather than the take that they have the full authority of law to take.

Thank you. My time has expired.

Mr. BEDELL. Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Wray, the examples you used in your testimony are humorous and also very revealing, I think, at least to me, but it shows a total inconsistency between the determination, it seems, of one commodity to another. You mention also that there was a lack of understanding about agriculture in the ITC. Does that mean that you are criticizing the kinds of people who are appointed that have no background in agriculture, who do not understand the agriculture economy and the impact it has in this country?

Mr. WRAY. No, sir. My observations were not intended to be criticism in that form.

Mr. SMITH. It is quite all right if you want to.

Mr. WRAY. I understand that, but I will say that in Washington and elsewhere, there are a number of people who are responsible for issues for which they do not have specific vocational training. But they do employ staff, they do stay open minded, and they are willing to learn.

My impression is that the problem with the ITC is not that everyone there doesn't have an agricultural background, but in the rush of time perhaps or otherwise an unwillingness or an inability to effectively use their staff. I think that they don't yet recognize that agricultural economics are distinctly different from the economics of the commodities with which they are more generally familiar. It may be that agriculture has not had occasion to come to the Commission that often in the past.

Mr. SMITH. All right. In your opinion then, more subjectively, is there a leaning toward protecting the consumer versus protecting the producer?

Mr. WRAY. I have seen inferences of that in certain decisions and particularly among certain of the Commissioners.

Mr. SMITH. So, you believe then, I am assuming from that—I don't want to put words in your mouth—that the ITC is tilted toward a cheap food policy in this country rather than interpreting the laws of unfair trade practices with respect to the producer. Is that right?

Mr. WRAY. I have read decisions by a number of the Commissioners in which I got that impression. Certainly Dr. Stern is one of them.

Mr. SMITH. Mr. Dorn, do you believe there is a tilt in philosophy toward a cheap food policy in the ITC and in their past rulings?

Mr. DORN. I really wouldn't say that based upon the decisions that I have seen. What I would say is that in antidumping and countervailing duty cases, the Commission has a lot more experience in dealing with industrial products. A key piece of evidence involving industrial products is whether the imports are underselling the domestic product.

In the case of fungible agricultural commodities, it is very rare to have evidence of underselling. The fact is that the marketplace is going to establish a price.

I have had trouble explaining to the Commission the fact that imports of a fungible commodity depress the price in the marketplace just because of the additional supply. It is not a result of underselling in the sense the Commission is usually seeing in industrial product cases. I think that is a type of a lack of understanding that Mr. Wray is talking about in the way the Commission treats agricultural product cases as opposed to industrial product cases.

Mr. SMITH. Then do you see it more as a staff problem in ITC that the staff is not producing the proper material to the members so that they can make a correct decision?

Mr. DORN. I think the Commission has an excellent staff and has economists and economists who are specialists in agricultural economics. I think the problem is that the Commission is not asking the staff the right questions. When the staff does report back to the Commission, the Commission isn't perhaps paying as much attention to the analysis as they should be.

In addition, they are just not used to analyzing these agricultural products the way they are used to dealing with the industrial product cases. They try to look at raspberries as if they were wrenches or lamb meat as if it were automobiles. And there are significant differences, as Mr. Wray was talking about earlier, because you are dealing with perishable products.

Mr. SMITH. You support the legislation sponsored by Mr. Bedell, and I assume, should it pass, we would be right back here talking about red raspberries, lamb, and I would like to talk about livestock. Do you see this as a precedent setting thing, and if it passes, do you see yourself coming back in following it commodity by commodity with legislation attempting to close the——

Mr. DORN. What I like about this legislation is that it is not specific to one industry. It is much more generic in approach and it offers a better approach for all agricultural products, in my view.

Mr. SMITH. So, you think this legislation does cover your commodities.

Mr. DORN. It would be helpful to the red raspberry grower and the canning peach grower and the canning pear grower.

Mr. SMITH. Would it be helpful to the lamb industry?

Mr. WRAY. Mr. Smith, at the moment, it wouldn't, again because of some of this incoherence that I discussed earlier. Just before the pork case, the ITC decided that lamb cuts—that is the imported product, frozen lamb cuts—is the same thing as fresh domestic lamb in cut and carcass form and that the industry that produces the cut lamb includes the growers as well as the processors.

Now, 2 months later, in pork, they said that the pork that comes in from Canada does not include the growers of hogs as part of the industry. It is simply baffling to us.

We don't have a problem there. We and other agricultural sectors have this problem of definition of product, definition of industry, but I am suggesting to you today, although I recognize that you are not the Ways and Means Committee but you are an important committee concerned with American agriculture, that we have problems that go beyond this, and we will continue to have problems.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. BEDELL. Mr. English.

Mr. ENGLISH. Mr. Wray, Mr. Dorn, you touched a little bit on the issue of a cheap food policy. In listening to what you were saying, I have to say that I have a little bit of difficulty understanding that being the principal cause, Mr. Wray. We are talking about a situation here, as I understand it, in which we have a staff over there that is knowledgeable about the problem, evidently is presenting the Commissioners with information that they would need to reach what we would consider I think to be the correct decision, but they receive that information and, time-and-time again, they veer off from utilizing that information to come to the logical conclusion.

Can either of you gentlemen tell me why this is time-and-time again, not just a selected case? Surely, if a person has little knowledge and information about agriculture and agricultural economics, you would think that would be the time they would rely most on the staff, particularly on those experts on the staff dealing with agriculture.

Mr. Wray, I will let you start off. Do you have any explanation for that?

Mr. WRAY. I have speculation. I have talked, of course, to the Commission staff and to others about this phenomenon. One thing that was suggested to me, and I am not in a position to know whether it is accurate or not, is that each of the Commissioners now have staffs of their own in addition to the Commission staff. The Commission staff will prepare a paper, a rather full and detailed paper, on the nature of the industry, the volume of imports coming in, the relative prices, and that will be presented to each Commissioner's staff who will evaluate and prepare their internal staff report to the Commissioner. I gather that there may be from

time to time substantial differences in expertise and in influence with the individual Commissioner between his own personal staff and the Commission staff.

I would like to mention that in a very real situation, one that you are familiar with, we presented in the lamb case uncontroverted evidence of massive herd liquidation. We explained why that occurs, because prices are low, the sheep farmers needs to sell more lambs in order to get the cash-flow to stay alive. He needs to sell more lambs to get the cash. As a result, the herds decline.

But the Commission responded that production is up, that looks good. Now, I pointed out to them that the Senate committee and the House Ways and Means Committee in 1979 in specific legislative history specifically mentioned that situation that in livestock industries when you have production going up, you can have a serious problem. It may be symptomatic of a serious problem. I mentioned this to them in briefs and in oral testimony.

In addition, they had their own economists telling them herds were being liquidated. But when the Commission made the decision, they said there is no evidence of herds being liquidated. Furthermore, in a preliminary, they said there is no compelling evidence of herds being liquidated, as if that is the standard in a preliminary anyway.

How can that be explained? I am baffled, and I am sure you are, too, but it is a problem, and it is a problem that counsel often is not able to resolve.

Mr. ENGLISH. Do you think, then, one proper step would be to eliminate the staffs over at the ITC?

Mr. WRAY. I don't know that. I don't know what the answer to that is.

Mr. ENGLISH. The personal staffs, I should say, not the Commission staff.

Mr. WRAY. I think there needs to be a better integration of the resources of the Commission from top to bottom.

Mr. ENGLISH. Mr. Dorn, do you have any magic solution?

Mr. DORN. I don't have any solution. I really empathize with Mr. Wray's problem because I read the staff report in the lamb meat case which talked about the herd liquidation phenomenon and then it appeared to me that the Commission just ignored what I saw as a factual finding that had been made by the staff.

Mr. COELHO. Would the gentleman yield to me?

Mr. ENGLISH. I would be happy to yield to the gentleman from California.

Mr. COELHO. When you say the staff review or recommendation or whatever, that is the professional staff of the Commission, not the personal staff of any member?

Mr. DORN. That is correct.

Mr. WRAY. I might add, Mr. Coelho, that in the pork case, though—Mr. Sandstrom can better respond to that—the professional staff report made no mention of this bizarre finding that was finally announced as the final determination. That came either from the Commissioner himself or I guess from his internal staff. I know that when the vote was made, the professional staff was directed to go back and rewrite their staff report.

Mr. BEDELL. Would the gentleman yield?

Mr. Ericson. Could I ask one final question on that, and then I would be happy to yield to the gentleman from Iowa.

Do you also suspect that the personal staff is the fly in the ointment in this particular situation?

Mr. Dixon. I really don't have any experience that would allow me to reach that conclusion.

Mr. Ericson. I would be happy to yield to the gentleman from Iowa.

Mr. Bedell. I wanted to point out that the report, even after it is rewritten, has a large number of tables that would seem to support the fact that there is damage and that indeed pork producers are losing money. The report documents it quite completely. You would think from the documentation that is in this report that it would be difficult for the ITC to reach the conclusion it did.

Mr. Ericson. Could I ask one final question? I know my time has expired, but——

Mr. Bedell. Certainly.

Mr. Ericson. Thank you, Mr. Chairman.

One final question with regard to that, we have a lot of other factors that are coming to bear, and I was wondering if either of you have seen evidence of this having an influence on the Commissioners. For instance, we have been all sensitive as far as our foreign policy is concerned. We have been very willing to trade off agriculture, to sell out agriculture perhaps is the best way to describe it, in trying to get some kind of cheap, fast foreign policy advantage at some place. Agriculture is the first commodity that seems like it is always sold off.

Second is the fact that we don't have a trade policy in this country. There are no guidelines to say this is the U.S. trade policy. So, anyone is perfectly free to make their own interpretation as to what they want that trade policy to be and how we approach it. There is no guidance certainly from the President nor any of the departments and agencies within the Government. They each have their own approach, their own policy.

Do either of those two factors fit in? Mr. Dixon, I will let you start off with that.

Mr. Dixon. I think, if you look at agriculture historically, exports have always been very important to the agricultural producer. If you look at the unfair trade cases that have been brought in the past, they have generally been industrial product cases. It is only more recently that we have seen a deterioration in the trade surplus situation of domestic agriculture, more concern about imports that are unfairly traded in the U.S. market, and it is a fairly recent phenomenon of these trade cases being filed.

I think there is some policy point of view that because exports are good for some segments of agriculture that you should be very reluctant to grant relief where unfairly traded imports are hurting another sector of agriculture. I think that policy overlay might be a problem here.

Mr. Ericson. Is there a policy? That is my point. I don't know of any policy, do you?

Mr. Dixon. Certainly not a coherent policy.

Mr. Ericson. Mr. Wong, do you have any comments with regard to that, whether either our foreign policy practices or the lack of a

trading policy has had an impact? Or defense policy? That is another point.

Mr. WOLFF. So, to those kinds of cases, I would confirm that it is more about that policy initiatives, policy creations, is just a prerequisite for the FTC. There are an administrative body. From time to time when a decision comes out that doesn't make a lot of people, one looks for other reasons and possibly to suggest a policy practice is. But the fact of the matter is that foreign policy or any other kind of policy is not a proper role for the International Trade Commission. There are times to interject some economic thinking in certain trading practices in international trade.

Mr. DINGELL. I would agree that is true in the purpose most world, but we don't have a problem most world, and there is no problem. There is no trade policy. There is no agreement. The only thing we have is foreign policy, defense policy and the is what the overall objectives of the Government are. Is there any evidence that has come to you?

Mr. WOLFF. Mr. Dingell, in this area I think there is a trade policy. I really do. And that policy is expressed in the various which we have agreed and, most importantly, in the implementing legislation of the U.S. Congress. That is the policy.

There is substantive legislative history. There is no real problem on a few minor issues, about which this law is well known to. There are some problems in applying that law to specific fact situations, but they are not problems in which policy has any appropriate role.

Mr. DINGELL. In other words, the Commission just doesn't want to follow the law. I think the Chairman

Mr. [illegible]. Mr. Roberts.

Mr. [illegible]. I have no questions, Mr. Chairman.

Mr. [illegible]. Thank you.

We have a couple of proposals that have been made, and I would like to offer them to the members of the subcommittee who are here for their consideration.

The first is that the Subcommittee on Department Operations, Research, and Foreign Agriculture and Commodity Policy, and that we jointly request the Inspector General of the Department of Research Service to conduct a study on the original congressional intent regarding the definition of processed agricultural products, and processors, and that this study will investigate all issues address the misconceptions which may have led the FTC and, pursuant to the FTC Commissioners regarding congressional intent and interpretation of the law to see if the decisions may not conform with the intent of Congress. In addition, we would like to ask that GAO conduct U.S. trade determinations to evaluate to the agency actions made by other countries.

What would be the first proposal?

The second proposal would be that the two subcommittees request the GAO to do an investigation of the operations of the FTC in terms of how -- same by personnel staff and the Commissioners itself and whether or not the FTC is making proper use of their staff to perform consistent with the law.

Is there any discussion on these two proposals?

Mr. Coelho.

Mr. COELHO. Mr. Chairman, on behalf of our subcommittee, I would like to strongly move ahead on this. I think that the International Trade Commission should know that there are people in this Congress who are concerned about their decisions or their lack of decision, and that we want to review how they are making those decisions and whether or not they are being properly made in compliance with not only the law but the legislative intent. We have pretty well spelled out on a number of occasions what the intent of the law is, and to see if they are following that.

If they are following that or not, then to be able to establish the case for legislation that you have introduced or legislation that maybe needs to be modified that needs to be introduced so that we can convince the Ways and Means Committee which has a broad jurisdiction, not just agriculture, but has a broad jurisdiction on this issue, but that we can show that agriculture is not being fairly considered in these cases.

So, I encourage that we move ahead on this as rapidly as possible.

Mr. OLIN. Mr. Chairman.

Mr. BEDELL. Mr. Olin.

Mr. OLIN. I certainly concur with my chairman on that. I just wanted to mention in passing here that the International Trade Commission does have an agricultural member on it, as you probably know. I don't know how strong he is or what position he took on this particular case, but——

Mr. BEDELL. He exempted himself.

Mr. OLIN. He is an Iowa hog farmer, but——

Mr. BEDELL. He had a conflict; he exempted himself. There are five Commissioners, and there were only three who ruled on this.

Mr. OLIN. I see. I guess his own agricultural activity may have taken him out, but I thought I would mention that. The gentleman happens to be a boyhood friend of mine from a long time back.

Mr. BEDELL. Do you concur, Mr. Smith?

Mr. SMITH. Mr. Chairman, I do concur, and I would like to add that I think we ought to carefully examine Mr. Wray's suggestion that because the market share is small or the market is declining, is not sufficient to be an index of final judgment by the ITC. I think this is an important point, and I think we ought to follow up on this matter.

Mr. BEDELL. Mr. Roberts, do you agree?

Mr. ROBERTS. Nobody is going to do the backstroke on these proposals, Mr. Chairman. I concur. I think we ought to go forward.

I am not sure all the irons in this fire are going to produce what we want. Let me ask the chairman, and I apologize for being late, is it our intent to have this informal meeting with the Commissioners with the three that made the decision or with all five?

Mr. BEDELL. I think it should be with all five Commissioners.

Mr. COELHO. I don't think we should pursue it based on just one decision. I think that wouldn't be appropriate. I think it would be very appropriate for us to include this decision along with our concern about agriculture and the way it is being treated.

Mr. ROBERTS. I would concur with my friend from California. Then, it is the intent of both subcommittees to recommend that the CRS Law Division conduct an overview. In addition, I am not clear

now what we are asking the GAO to do. Would the chairman explain?

Mr. BEDELL. Surely. The testimony we have had indicates that, in the opinion of some of the witnesses at least, the Commissioners have their own personal staff as well as the Commission staff, and that the Commission staff, in the opinion of some of the witnesses, does quite a good job of analyzing the issues and furnishing the information to the Commissioners, but that some of the Commissioners do not pay much attention to the Commission staff and instead rely excessively on their personal staff. Consequently, there is great concern as to whether the ITC is properly organized from a staff standpoint.

Mr. ROBERTS. I understand and share the gentleman's concern. Then, it is my understanding that Ways and Means is going to take this up as well. Is that correct?

Mr. BEDELL. I don't believe we have any commitment from Ways and Means that they will move forward with this legislation. However, since the legislation is generic, I have the impression that it is more than just the hog producers who would have an interest in trying to see Ways and Means move forward with such legislation.

Mr. COELHO. If the gentleman will yield——

Mr. ROBERTS. Yes, I would be happy to yield.

Mr. COELHO. I think that if we showed the gentleman from Florida, Mr. Gibbons, the results of our reviews and that they did point out some of our concerns, if that is the result, that the gentleman from Florida would be very interested in moving ahead. In my discussions with him with regard to the situation on the grape problem, he was very sympathetic, understanding, and supportive of trying to make sure that agriculture was properly considered.

So, I think that if we spell out our case to him, he would be willing to move ahead.

Mr. BEDELL. Would the gentleman yield further?

Mr. ROBERTS. Yes, I would be happy to yield.

Mr. BEDELL. I believe that meeting with the Commissioners and these other requests would help to strengthen any efforts we might make with the Ways and Means Committee.

Mr. ROBERTS. Mr. Chairman, the only suggestion I might make—I am not opposed to GAO conducting a study; they conduct studies on virtually everything from apples to zebras in this town and most of it is usually helpful, albeit at the direction of the committee chairmen involved in determining both policy and in terms of legislative intent—would it be helpful to meet with the Commissioners first and then go ahead with a study if we felt that would be the course to take or should that be independent of that meeting?

Mr. BEDELL. My opinion would be that we should go ahead on all three simultaneously, but that is up to the members of our subcommittees.

Mr. COELHO. Would the gentleman yield?

Mr. ROBERTS. Yes, I would be happy to yield.

Mr. COELHO. I would think it would be good for us to move ahead and let the Commission know that we have moved ahead. I think our meeting might be more productive with them knowing that we

are serious, that it isn't just a sit down and have a cup of coffee type meeting, that we are serious about it.

Mr. ROBERTS. If I could reclaim my time, I think anybody who pays any attention to these hearings over in that shop will know that we are damn serious. Pardon my language, but——

Mr. COELHO. They are probably not even represented here today. They declined to attend.

Mr. ROBERTS. Well, they don't attend in terms of these kinds of hearings as a matter of policy, and they have staff here, and I would think that their pencils have been very busy, and I would think that the message would be relayed in no uncertain terms. I am just wondering—I know the gentleman is an excellent poker player in many other legislative endeavors, and I just wondered if the GAO study might be one of the cards we would hold back.

Mr. COELHO. If the gentleman will yield——

Mr. ROBERTS. Yes, I would be happy to yield.

Mr. COELHO. I would prefer from my position that we go ahead with both requests and the request of the ITC. I would think that the record here so far today shows that there is serious question as to what is being done over there. I think we should clear it up not only for us but for the record and for the ITC. I think they would want to have it cleared up as well.

If there is nothing there, that is fine, but if there is something there, I think it should be cleared up for everybody's concern. I think, basically—and I know, Mr. Roberts, your philosophy on that—I think that all of us are really not after some witch hunt. We are really trying to see if we can do something to help out agriculture. Based on the witnesses, and you missed their testimony, but I think the point that is being made here is that the ITC has very little knowledge of agriculture, that basically by law the producers have been excluded from being involved to a great extent——

Mr. ROBERTS. Well, if I might reclaim my time, I have read the statements by the witnesses, and in traveling my district and all throughout Kansas, I know the adverse effects with regard to this ruling to my pork producers.

It is just the timing of the thing that sort of bothered me. I would hope we could get this cleared up with the informal meeting and with the CRS study, and that the GAO study would not have been necessary. However, if George Brett can go four for four in the last game of the series, I will certainly go three for three, and I concur with my chairman's wishes.

Mr. COELHO. Thank you.

Mr. BEDELL. Thank you. Are there further comments? If not, we will proceed in all three areas.

We appreciate your testimony very much. We have one more panel left, and we would like to move forward with that panel if we possibly could before noon.

We have Mr. Don Gingerich, past president of the Iowa Pork Producers Association and board member of the National Pork Producers Council; and Mr. Bob Joslin, vice president of the Iowa Farm Bureau from west Des Moines. So, we have the Iowa witnesses here before us.

We would appreciate it if you would summarize your testimony wherever you could. Mr. Gingerich, will you go first?

STATEMENT OF DON GINGERICH, PAST PRESIDENT, IOWA PORK PRODUCERS ASSOCIATION AND BOARD MEMBER, NATIONAL PORK PRODUCERS COUNCIL

Mr. GINGERICH. Chairman Bedell and members of the subcommittees, my name is Don Gingerich. I am a pork producer from Parnell, IA. Our family operates a farming operation which includes both grain and livestock. I am a past president of the Iowa Pork Producers Association and am currently serving on the executive committee on the National Pork Producers Council, board of directors. I want to thank you for this opportunity.

As a pork producer, and particularly over the last 5 years, I have had the opportunity to observe a broad spectrum of issues affecting the pork industry on the national, State, and local level.

This importation issue affects producers and continues today to be very important to us in the pork industry because it is definitely suppressing prices in an already ailing industry. The economic reality of having to compete with producers receiving economic assistance from their national treasuries is profoundly affecting pork producers as they strive to realize even meager profits.

Statistics developed by Glenn Grimes, a University of Missouri extension economist, indicate a $246 to $564 million impact on the U.S. pork industry. Iowa produces approximately 27 percent of the Nation's pork supply, and the impact on our State is $66 to $152 million, and this is over a 7-month period in this year, 1985.

Mr. Grimes' statistics do not address the effect of those unrealized dollars as they make their way through the support industries in rural Iowa in purchases of equipment, feed, and supplies, all of which would equate to important jobs in a State whose economy is not running anywhere near its potential. The importation of foreign pork hurts not only the producer but also those who depend on the producer for their livelihood. Without dwelling on the subject of farm foreclosures, credit problems, or a host of other ills sweeping over agriculture, I wish to present our concern that pork imports are further complicating the ag crisis, particularly in the upper Corn Belt.

We have always been willing to compete as producers on an even footing with pork entering the United States. However, when countervailing duties were put into place on Canadian pork entering the United States, a basic economic relationship was not identified. Simply stated, without hogs, it is impossible to have pork in any form, be it fresh, chilled, or frozen.

The influx of either live hogs or their direct product—fresh, frozen, and chilled pork—has the same ultimate conclusion, the displacement of pork already in the marketplace. The economic effect of the imported product is the same on the producer. The U.S. producer must economically encounter the brunt of the oversupply situation which is supported by a foreign government, and this is particularly unfair, after having reduced his own production with the hope of an opportunity to enhance our profitability, and

producers in our country and in our State have reduced their herd sizes to accommodate this.

The Iowa Pork Producers Association supports H.R. 3328 because of its fundamental acknowledgment that as a raw agricultural product, live hogs have a distinct and direct relationship with fresh, chilled, or frozen pork through a single continuous line of production.

Although as producers we are willing and able to compete on the same economic terms, the effects are critical and the results are crucial on Iowa producers, the Iowa economy, and the Nation. These products enter the U.S. market with an unfair and calculated economic advantage. These products are subsidized by stabilization programs in Canada.

We appreciate the opportunity to bring these comments before these subcommittees.

Thank you.

[The prepared statement of Mr. Gingerich follows:]

IOWA-The Pork Capital of the World

TO:
HOUSE OF REPRESENTATIVES
SUB-COMMITTEE ON DEPARTMENT OPERATIONS, RESEARCH
AND FOREIGN AGRICULTURE
AND THE
SUB-COMMITTEE ON LIVESTOCK, DAIRY AND POULTRY

PRESENTED BY:
DON GINGERICH
NATIONAL DIRECTOR
OCTOBER 30, 1985 - 9:30 A.M.
LONGWORTH HOUSE OFFICE BUILDING
ROOM 1302

IOWA PORK
Producers Association

1636 N.W. 114th STREET, BOX 7, CLIVE, IOWA 50053 / 515-225-7675 OR 1-800-372-7675

MY NAME IS DON GINGERICH, I AM A PORK PRODUCER FROM PARNELL, IOWA. OUR FAMILY OPERATES A FARMING OPERATION WHICH INCLUDES LIVESTOCK AND GRAIN. I AM A PAST PRESIDENT OF THE IOWA PORK PRODUCERS ASSOCIATION AND CURRENTLY REPRESENT IOWA ON THE NATIONAL PORK PRODUCERS COUNCIL, BOARD OF DIRECTORS. ON BEHALF OF THE IOWA PORK PRODUCERS ASSOCIATION, I WISH TO THANK YOU FOR THE OPPORTUNITY TO PRESENT OUR CONCERNS.

AS A PORK PRODUCER, I HAVE HAD THE OPPORTUNITY TO OBSERVE A BROAD SPECTRUM OF ISSUES AFFECTING THE PORK INDUSTRY ON THE NATIONAL, STATE AND LOCAL LEVEL.

ONE OF THE PARAMOUNT ISSUES TO EVER AFFECT PORK PRODUCERS, CONTINUES TODAY, THE SITUATION OF THE IMPORTATION OF PORK FROM OUTSIDE THE U.S. INTO OUR COUNTRY IS SUPPRESSING PRICES OF AN ALREADY AILING INDUSTRY. THE ECONOMIC REALITY OF HAVING TO COMPETE WITH PRODUCERS RECEIVING ECONOMIC ASSISTANCE FROM THEIR NATIONAL TREASURIES IS PROFOUNDLY AFFECTING PORK PRODUCERS AS THEY STRIVE TO REALIZE EVEN MEAGER PROFITS.

STATISTICS DEVELOPED BY GLENN GRIMES, UNIVERSITY OF MISSOURI EXTENSION ECONOMIST INDICATE A 246 MILLION DOLLAR TO 564 MILLION DOLLAR IMPACT ON THE U.S. PORK INDUSTRY. (SEE TABLE 1) IOWA PRODUCES APPROXIMATELY 27% OF THE NATION'S PORK SUPPLY AND THE IMPACT ON IOWA PORK PRODUCERS RANGES FROM 66 MILLION DOLLARS TO OVER 152 MILLION DOLLARS. MR. GRIMES' STATISTICS DO NOT ADDRESS THE EFFECT OF THOSE UNREALIZED DOLLARS AS THEY MAKE THEIR WAY THROUGH THE SUPPORT INDUSTRIES IN PURCHASES OF EQUIPMENT, FEED AND SUPPLIES. ALL OF WHICH WOULD EQUATE TO IMPORTANT JOBS IN A STATE WHOSE ECONOMY IS NOT RUNNING ANYWHERE NEAR ITS POTENTIAL. IN SHORT, THE IMPORTATION OF FOREIGN PORK HURTS NOT ONLY THE PRODUCER BUT ALSO THOSE THAT DEPEND ON THE PRODUCER FOR THEIR LIVELIHOOD. WITHOUT DWELLING ON THE SUBJECT OF FARM FORECLOSURES, CREDIT PROBLEMS, OR A HOST OF OTHER ILLS SWEEPING

OVER AGRICULTURE, I WISH TO PRESENT OUR CONCERN THAT PORK IMPORTS ARE FURTHER COMPLICATING THE AG CRISIS, PARTICULARLY IN THE UPPER CORN BELT.

OUR ASSOCIATION'S CONTENTION SINCE THE ONSET OF THE PORK IMPORTATION ISSUE HAS BEEN OUR WILLINGNESS AS PRODUCERS TO COMPETE ON AN EVEN FOOTING WITH PORK ENTERING THE U.S. HOWEVER, WHEN COUNTERVAILING DUTIES WERE PUT INTO PLACE ON CANADIAN PORK ENTERING THE U.S., A BASIC ECONOMIC RELATIONSHIP WAS NOT IDENTIFIED; SIMPLY STATED, WITHOUT HOGS IT IS IMPOSSIBLE TO HAVE PORK IN ANY FORM, BE IT FRESH, CHILLED OR FROZEN.

THE INFLUX OF EITHER LIVE HOGS OR THEIR DIRECT PRODUCT (FRESH, FROZEN AND CHILLED PORK) HAS THE SAME ULTIMATE CONCLUSION; THE DISPLACEMENT OF PORK ALREADY IN THE MARKET PLACE. THE ECONOMIC EFFECT OF THE IMPORTED PRODUCT IS THE SAME ON THE PRODUCER. THE U.S. PRODUCER MUST ECONOMICALLY ENCOUNTER THE BRUNT OF THE OVER SUPPLY SITUATION WHICH IS SUPPORTED BY A FOREIGN GOVERNMENT THIS IS PARTICULARLY UNFAIR, AFTER HAVING REDUCED HIS OWN PRODUCTION WITH THE HOPE OF AN OPPORTUNITY FOR ENHANCED PROFITABILITY.

THUS, THE IOWA PORK PRODUCERS ASSOCIATION SUPPORTS H.R. 3328 BECAUSE OF ITS FUNDAMENTAL ACKNOWLEDGMENT THAT AS A RAW AGRICULTURAL PRODUCT, LIVE HOGS HAVE A DISTINCT AMD DIRECT RELATIONSHIP WITH FRESH, CHILLED OR FROZEN PORK, THROUGH A SINGLE CONTINUOUS LINE OF PRODUCTION.

ALTHOUGH AS PRODUCERS WE ARE WILLING AND ABLE TO COMPETE ON THE SAME ECONOMIC TERMS, THE EFFECTS ARE CRITICAL, AND THE RESULTS ARE CRUCIAL ON IOWA PRODUCERS, THE IOWA ECONOMY, AND THE NATION. THESE PRODUCTS ENTER THE U.S. MARKET WITH AN UNFAIR AND CALCULATED ECONOMIC ADVANTAGE.

WE APPRECIATE THE OPPORTUNITY TO BRING OUR COMMENTS TO THE HOUSE OF REPRESENTATIVES SUB-COMMITTEE ON DEPARTMENT OPERATIONS, RESEARCH AND FOREIGN AGRICULTURE AND THE SUB-COMMITTEE ON LIVESTOCK, DAIRY AND POULTRY.

THANK YOU.

(Table follows:)

TABLE I
ESTIMATED IMPACT OF CANADIAN HOG/PORK
IMPORTS ON U.S. PORK PRODUCERS

YEAR	CWT. IMPACT	TOTAL IMPACT
1982	$1.19 - $2.97	$236 - $579 MILLION
1983	$1.12 - $2.80	$236 - $583 MILLION
1984	$1.86 - $4.67	$381 - $940 MILLION
1985*	$2.12 - $4.85	$246 - $564 MILLION

* SEVEN-MONTH COMPARISON

SOURCE: GLENN GRIMES, UNIVERSITY OF MISSOURI AG. ECONOMIST

CANADIAN IMPORTS AS A PERCENT OF U.S. PORK CONSUMPTION = 4.37 PERCENT

Mr. BEDELL. Thank you very much.
Mr. Joslin.

STATEMENT OF ROBERT JOSLIN, VICE PRESIDENT, IOWA FARM BUREAU FEDERATION

Mr. JOSLIN. Thank you, Mr. Chairman.

I am Bob Joslin. My wife and I farm in western Iowa. We have a corn and soybean operation. Our major source of income comes from raising hogs.

The American Farm Bureau Federation is the Nation's largest general farm organization with a membership of over 3 million families in 48 States and Puerto Rico. I serve as vice president of the Iowa Farm Bureau Federation. I am also a hog producer and, therefore, I am also a pork producer.

The Farm Bureau appreciates the opportunity to appear before this joint hearing, and we thank the chairmen for their concern about a trade remedy problem that could potentially affect producers of many agricultural products. The problem is that unfairly traded imports of processed agricultural products can cause injury not only to the domestic producer of the same or like processed product, but also to the producer of the raw farm product that goes into that processed product.

The American Farm Bureau Federation recognized this problem in developing its national policies for 1985. Let me quote the following statement from our policy guidelines:

> We support legislation to give producers of raw agricultural commodities legal standing in petitioning for relief from imports of processed agricultural commodities.

This statement was adopted by our members prior to the International Trade Commission's final ruling in the *Canadian pork and hog countervailing duty* case in July of this year. Frankly, it was probably aimed at problems farmers have encountered in other trade remedy complaints. It was probably not aimed at the pork and hog situation because it is doubtful that anyone could have conceived that a ruling such as the one by the ITC would be possible.

The ITC decided on July 25 that material injury was being suffered by the United States pork industry as a result of imports of live Canadian hogs, but not as a result of imports of Canadian pork. The apparent logic applied by the ITC was that hog producers and pork producers were not producers of a like product. The reasoning for this was that the ITC felt there was not sufficient legal integration between hog producers and pork packers. The ITC reached its negative determination on pork despite the acceptance that pork is produced from live swine through a continuous line of production and, therefore, the economic interdependence between the two was absolutely clear.

We can only assume that the test a farm industry must meet to satisfy ITC guidelines for injury is that producers of raw products must process and package their own output in order to be adversely affected by unfair imports of processed products.

The American Farm Bureau believes strongly that this decision, if allowed to establish a precedent, is very wrong. As our policy

states, we believe that there should be additional flexibility in our trade statutes to allow producers to have standing in these situations. This ITC decision, in our view, moves us to the brink of an interpretation that would allow virtually no agricultural producer to have standing in such cases. Since many farm products must be transformed in some fashion for marketing and trade, no producer of those products could hope in the future to have recourse to U.S. trade laws under this ITC decision.

We all know that hogs are not consumed live, and no pork is produced that did not originate from a hog. There can be no question, therefore,that injury from imports of either product would be felt by both producers and packers in the U.S. market. The ITC decision on hogs was not a partial victory for the U.S. pork industry. It was a nonvictory.

Despite the protests from our neighbors north of the border about the injury finding on hogs, the general attitude of Canadian pork producers had to be a collective shrug of the shoulders. The hogs that now would be subject to countervailing duties upon entry into the United States will simply be slaughtered in Canada and shipped south without any restriction. This will occur even though the subsidies on Canadian hogs that had been determined to be injurious will remain in effect and will continue to be passed through to the end product.

The U.S. pork industry continues to feel the adverse effects of foreign subsidized competition in our own market. Imports of live hogs from Canada during the first 8 months of this year were 20 percent higher than the level during the same period in 1984. Imports of fresh and chilled pork from Canada were up 26 percent over last year.

Estimates have been made at the University of Missouri. These figures have already been pointed out, and they are in my testimony. I think I will forgo those for now. Mr. Chairman, these and other data are included in several tables I would like to append to my prepared statement and, with your permission, have included in the record.

Mr. BEDELL. Without objection, they will be included in the record.

Mr. JOSLIN. Thank you, sir.

The American Farm Bureau Federation seeks continued advice from its farmer members on issues affecting U.S. agriculture. Our swine advisory committee, made up of 20 producers throughout the country, met on August 6 and 7 and prepared the following submission to the Farm Bureau board on August 27: "The committee requests the Farm Bureau to continue to support countervailing duty actions against subsidized live hog and pork products that are imported into the United States."

We can only effectively support our pork producers and other agricultural producers if they are allowed to have legal standing in trade cases that affect their livelihood. The Farm Bureau is, therefore, very much discouraged by the ITC's decision in the pork case. We would encourage and support legislation that would facilitate consideration by the ITC of producer injury in cases of unfair imports of processed agricultural products.

Mr. Chairman, I thank you for the opportunity to present American Farm Bureau Federation's views on this problem to your two subcommittees today. American farmers already widely feel that their hands are tied in responding to unfair trade practices that retard our exports. We cannot afford, at the same time, to throw away the few available tools we have to respond to unfair practices that are now taking away our domestic markets.

I would be happy to respond to any questions.

Thank you.

[The prepared statement of Mr. Joslin follows:]

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION
BEFORE THE SUBCOMMITTEE ON DEPARTMENT OPERATIONS, RESEARCH AND FOREIGN AGRICULTURE AND THE
SUBCOMMITTEE ON LIVESTOCK, DAIRY AND POULTRY
OF THE HOUSE COMMITTEE ON AGRICULTURE
WITH REGARD TO THE CANADIAN PORK IMPORTS DECISION BY THE
UNITED STATES INTERNATIONAL TRADE COMMISSION

PRESENTED BY
ROBERT JOSLIN, VICE PRESIDENT
IOWA FARM BUREAU FEDERATION

OCTOBER 30, 1985

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from live swine through a continuous line of production and, therefore, the economic interdependence between the two was absolutely clear. We can only assume that the test a farm industry must meet to satisfy ITC guidelines for injury is that producers of raw products must process and package their own output in order to be adversely affected by unfair imports of processed products.

The American Farm Bureau believes strongly that this decision, if allowed to establish a precedent, is very wrong. As our policy states, we believe that there should be additional flexibility in our trade statutes to allow producers to have standing in these situations. This ITC decision, in our view, moves us to the brink of an interpretation that would allow virtually no agricultural producer to have standing in such cases. Since many farm products must be transformed in some fashion for marketing or trade, no producer of those products could hope in the future to have recourse to U.S. trade laws under this ITC decision.

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The U.S. pork industry continues to feel the adverse effects of foreign subsidized competition in our own market. Imports of live hogs from Canada during the first eight months of this year were 20 percent higher than the level during the same period in 1984. Imports of fresh and chilled pork from Canada were up 26 percent over last year.

Estimates have been made at the University of Missouri of the financial impact on American pork producers of Canadian pork and hog shipments to our market. For the first eight months of 1985, the price impact was between $2.08 and $4.77 per hundredweight. The total losses to producers ranged between $277 million and $635 million, according to this study.

The pork industry is also suffering from the subsidized exporting of pork products from the European Community, and this is the subject of a current so-called 332 investigation at the ITC. The impact of these imports on the U.S. industry are estimated by the University of Missouri at between $1.57 and $3.61 per hundredweight for total losses

to the industry of between $209 million and $481 million. Mr. Chairmen, these and other data are included in several tables I would like to append to my statement and with your permission have included in the record.

The American Farm Bureau Federation seeks continued advice from its farmer members on issues affecting U.S. agriculture. Our Swine Advisory Committee, made up of 20 producers, met on August 6 and 7 and prepared the following submission to the Farm Bureau Board on August 27: "The Committee requests the Farm Bureau to continue to support countervailing duty actions against subsidized live hog and pork products that are imported into the United States."

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(Tables follow:)

TABLE 1

U.S. IMPORTS OF CANADIAN LIVE HOGS AND PORK
EIGHT MONTH COMPARISON

	1985	1984	PERCENT CHANGE
Live Hogs (No. Head)	1,035,875	861,462	+20
Fresh and Chilled Pork (Metric Tons)	103,885	82,502	+26
Frozen Pork (Metric Tons)	18,675	23,576	-21

SOURCE: USDA FOREIGN AGRICULTURAL SERVICE

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TABLE 2

ESTIMATED IMPACT OF HOG/PORK IMPORTS FROM CANADA
ON U.S. PORK PRODUCERS

YEAR	CWT IMPACT	TOTAL IMPACT
1982	$1.19-$2.97	$236-$579 million
1983	$1.12-$2.80	$236-$583 million
1984	$1.86-$4.67	$381-$940 million
1985*	$2.08-$4.77 ($3.37/cwt. best estimate)	$277-$635 million ($449 million best estimate)

*Eight Month Comparison

SOURCE: GLENN GRIMES, UNIVERSITY OF MISSOURI AGRICULTURAL ECONOMIST

TABLE 3

U.S. PORK IMPORTS FROM THE EUROPEAN COMMUNITY
EIGHT MONTH COMPARISON

	1985	1984	PERCENT CHANGE
Fresh and Chilled Pork (Metric Tons)	2,489	433	+475
Frozen Pork (Metric Tons)	48,241	25,814	+87
Boned, Canned Pork (Metric Tons)	58,186	48,681	+20
Total Pork (Metric Tons)	118,412	82,718	+43

SOURCE: USDA FOREIGN AGRICULTURAL SERVICE

****

TABLE 4

ESTIMATED IMPACT OF PORK IMPORTS FROM THE EUROPEAN COMMUNITY
ON U.S. PORK PRODUCERS

YEAR	CWT IMPACT	TOTAL IMPACT
1985*	$1.57-$3.61 ($2.75/cwt. best estimate)	$209-$481 million ($342 million best estimate)

*Eight Month Comparison

SOURCE: GLENN GRIMES, UNIVERSITY OF MISSOURI AGRICULTURAL ECONOMIST

****

TABLE 5

PORK AND LIVE HOG IMPORTS
AS PERCENT OF TOTAL U.S. PORK CONSUMPTION
1982-1985

1982	1983	1984	1985 Estimate (8 Months)
4.6	5.1	7.6	9.0

Mr. BEDELL. We thank you both for your testimony.

Have you both been here for a good share of the hearing this morning?

Mr. JOSLIN. Yes.

Mr. GINGERICH. Yes.

Mr. BEDELL. Do you have any disagreement with the decisions that have been made by the subcommittees in regard to pursuing a meeting with ITC and requesting studies by the GAO and CRS?

Mr. GINGERICH. I think that was a good decision to investigate, because I have been dealing with the commissioners and their staff now for well over a year, and it seems like the evidence in this case proved the point that pork was a like product and yet they ruled differently. So, it is a good idea.

Mr. BEDELL. Do you agree, Mr. Joslin?

Mr. JOSLIN. I agree the subcommittees should investigate. I think the meeting with the Commissioners in itself would be extremely important. They may have some reason for doing that. Certainly, I don't think it is recognizable, but I think they ought to be consulted, anyway.

Mr. BEDELL. Mr. Roberts, do you have any questions?

Mr. ROBERTS. Yes, Mr. Chairman. I want to thank the witnesses, not only for your statements, but for laboring in the trenches here for some time on this particular issue.

Were you both surprised by this decision, given your relationship with the staff and with the ITC when this came down?

Mr. GINGERICH. Yes, I was.

Mr. JOSLIN. I am sorry, I am not sure I understand the question.

Mr. ROBERTS. I am just saying that you have worked, along with many others, on behalf of some relief, and there were a lot of us who were very pleased by the first step. But when the second step was taken, it looked like the two-step in the wrong direction. I, for one, was indeed surprised by that second step, as I have indicated in my earlier statement.

I just wondered if you had any indication on the part of any aggie group here that that was going to happen?

Mr. JOSLIN. I guess I think it is unfortunate that Mr. Lodwick had to decline to participate in the decision because of his personal interest in hogs. He adds more to the Commission as far as agriculture than any of the others, I think.

Mr. ROBERTS. Thank you for appearing, and thank you for your very fine statements.

Mr. BEDELL. We want to thank both of you for your testimony and for your interest in this issue.

We want to thank also all of the other witnesses that have testified.

We are not meeting at 2 as originally scheduled, so the subcommittees will stand adjourned at this time.

[Whereupon, at 11:52 a.m., the subcommittees recessed, to reconvene subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

Statement for the Hearing Record

Statement of Congressman Byron L. Dorgan
for the House Agriculture Subcommittees
on Department Operations, Research
and Foreign Agriculture,
and Livestock, Dairy and Poultry

Review of the International Trade Commission Decision
on Imports of Swine and Pork Products from Canada

October 30, 1985

Mr. Chairman, I appreciate the opportunity to share some of my thoughts on the International Trade Commission's Canadian pork import decision.

As other witnesses have noted, this is truly a case of pork producers having won the battle but lost the war. As you know, the International Trade Commission's reversal on the question of whether pork producers and pork processors are part of the same industry -- first saying yes; then saying no -- has not granted the relief that both the ITC and the Commerce Department have determined is due pork producers because of Canadian subsidies.

The numbers are clear: yes, live hog imports are down -- in my own state of North Dakota they are down from 398,878 in the first three quarters of 1984, to 323,061 in the first three quarters of this year -- but the importing of fresh, chilled and frozen pork products is up.

I believe the ITC is splitting hairs in applying the countervailing duty statute in ways Congress never intended. Congress set out its concern for applying the injury provisions of the countervailing duty statutes to agricultural products, and particularly for livestock, in the legislative history of the 1979 Trade Agreements Act.

Now, however, it seems that Congress needs to be crystal clear about its intentions in this section of the law. That is why I have co-sponsored H.R. 3328, introduced by you, Mr. Chairman, and other members of the Agriculture Committee, to accomplish that end.

The farm sector is already depressed through forces over which it has not control -- low farm prices; high interest rates; the strength of the dollar. This Administration must understand that we need aggressive use of the powers it has been granted to protect our farmers and livestock producers against foreign subsidies which unfairly usurp the market for U.S. agricultural products, and which add to the farm sectors' burdens.

The ITC decision does not meet this standard -- not by a long shot.

NATIONAL CATTLEMEN'S ASSOCIATION
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November 7, 1985

The Honorable Berkley Bedell
Chairman, Subcommitee on Department Operations,
Research and Foreign Agriculture
Committee on Agriculture
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing in reference to H.R.3328 and the hearings you recently held with respect to the International Trade Commissions recent decision on the import of swine and pork products from Canada. Because of scheduling conflicts, NCA was not able to have a witness at the hearings. However, I would like to have this letter entered as part of the hearing record.

The National Cattlemen's Association supports H.R. 3328 and commends you for introducing this legislation.

We have followed the activities of the pork industry and it's efforts before the ITC. We do find it hard to believe and accept the ITC's ruling which differentiates between swine and pork as it impacts the domestic pork industry.

The ITC ruling that hog producers and pork processors were not producers of like product and consequently were not members of the same industry, is baffling and unacceptable. This same situation could happen to the beef cattle industry and other agricultural producers.

If the ITC needs a more distinct direction in defining and interpreting trade remedy laws written by Congress, then so be it. H.R. 3328 does what is needed to clairify the relationship between producer and processor in a single line of production.

The United States is the world's largest importer of beef. As cattle producers, we do have some assurances of predictability and stability on the import issue because of the Meat Import Act of 1979. However, this act does not address unfair trading practices of other countries.

We are constantly monitoring the trade practices of other countries as related to beef. The European Community, for instance, is said to have over 1,000,000 metric tons of beef in government storage. This huge amont of beef represents a threat to all beef trading countries in the world. It is being placed in other markets with the help of substantial export subsidies from the EC.

As far as we're concerned, beef is beef whether it is walking around in a pasture or being imported in a sixty pound box, frozen.

Therefore, to reiterate, the NCA commends you and supports your efforts with H.R. 3328.

We will work with you and representatives of other industries affected, including pork to seek a satisfactory solution to this problem.

Sincerely,

J. Burton Eller, Jr.
Vice President,
Government Affairs

JBE/slc

Remarks by
The Honorable Thomas N. Kindness
October 30, 1985

Before the House Committee on Agriculture
Joint Hearing of the Subcommittees on
Department Operations, Research, and Foreign Agriculture
and Livestock, Dairy, and Poultry

Mr. Chairman and other distinguished Members, I would like to commend you for your efforts to investigate and explore efforts to provide relief for American pork producers adversely affected by the International Trade Commission's (ITC) recent decision to impose countervailing duties on the imports of live Canadian swine, but not on packaged or frozen pork products.

It's been said that two Congressional Districts in Western Ohio contain about 80% of all the pork producers in the State of Ohio. While I don't have the exact statistics at my disposal, I think that statement may be right on target, at least in the case of my Congressional District (Ohio's Eighth) which runs along the Ohio-Indiana border in Western Ohio.

Like many of you I imagine, I began to hear from pork producers in my Congressional District early this year expressing concern about U.S. hog market penetration by subsidized Canadian pork products. I

have no doubt that we have all seen the nationwide numbers indicating the extent of that market penetration--estimates vary on the impact of such subsidization from $277 million to $635 million on the U.S. hog industry, according to the USDA in a recent eight month comparison study.

As we followed the ITC investigation and heard from Eighth District pork producers, it quickly became apparent that to many of those producers this was more than a dollar and cents issue. We also found that the case, as a result, carried a very emotional and symbolic meaning for many U.S. pork producers. In fact, the announcement this past summer that the ITC had found injury to U.S. pork producers from the import of live Canadian swine justifying countervailing duties for such, but not for packaged or frozen pork products, was simply too much. For some pork producers, who have witnessed the decline of the value of their land and constant increases in the cost of machinery and other items important to their farming operation, the ITC decision was the last straw.

As we are all painfully aware, these farmers pour their lives and their very existence into their operation--it is a part of them. They work hard to meet their obligations, but I don't see how they can continue to do so if subsidized pork, in any form, continues to pour into an already sensitive U.S. market.

I hope these hearings will shed some light on the ITC's reasoning in coming to their decision in this case, but it appears that the ITC provided relief to U.S. pork producers to the extent that present law allows.

It seems we so often find ourselves saying around here, "if it ain't broke, don't fix it". That addage may be appropriate in many instances, but it simply does not apply to this situation. In my view, we do need to close the loophole in present law which allows a situation such as we have witnessed with regard to pork imports to develop.

I have offered my support for H.R. 3328, introduced by Mr. Bedell of Iowa. This measure would make our trade laws relating to agricultural products more effective by "linking related industries where the effect of subsidization is the same", to paraphrase my good friend from Iowa. H.R. 3328 would apply common sense to this section of our trade law.

Although the legislation is not by any means the answer to all of our farming problems, it goes a long way toward restoring the faith of U.S. farmers in our ability to enforce our trade law for the good of our citizens.